

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.42 of 2024

- 1. Sri Chandan Roy Barman,**
S/o Jagadish Ray Barman, R/o: Vill Old Kalibari, Advisor Chowmahani,
West Tripura, Age 51 years
- 2. Smt. Swapna Chakraborty,**
W/o Sri Apu Chakraborty, R/o: Vill & PO ONGC, Kanchanpalli, Amtali,
West Tripura, Age 46 years
- 3. Sri Raju Ghosh,**
S/o Bashudeb Ghosh, R/o Uttar Banamali Pur, East Agartala West Tripura,
Age 44 years
- 4. Smt. Shilpi Banik,**
D/o Lt. Haridas Banik, R/o: Vill 79 Tilla, Lenin Colony, Agartala, PO
Kunjaban Tripura, Age 55 years
- 5. Smt. Sabita Debnath,**
W/o Haripada Debnath, R/o: Vill East Chanmari, Bankumari, Agartala,
West Tripura, Age 50 years
- 6. Sri Pradip Shil,**
S/o Sri Nidhir Shil, Vill Jogendra Nagar, Mahashakti Club, PO Jogendra
Nagar, Agartala, West Tripura, Age 45 years
- 7. Sri Pranjit Dey,**
S/O Late Hirendra Dey, R/o: Vill Joynagar Dashamighat, Battala, Agartala,
West Tripura, Age 41 years
- 8. Sri Ajit Kr. Das,**
S/o Jogendra Das, R/o: Vill South Badharghat, P.O. Charipara, West
Tripura, Age 51 years
- 9. Sri Dilip Malakar,**
S/o Gouranga Malakar, R/o: Vill & P.O. ONGC, Agartala, West Tripura,
Age 48 years
- 10. Sri Pradip Dhar,**
S/o Late Lalit Bhusan Dhar, R/o: Vill & P.O. East Pratapghar, Agartala,
West Tripura, Age 53 years
- 11. Sri Laxman Bhowmik,**
S/o Late Rabindra Bhowmik, R/o: Vill Hapania, P.O. ONGC, Amtali, West
Tripura, Age 46 years
- 12. Sri Dilip Das,**
S/o Bashu Das, R/o: Vill Kanchanmala, P.O. Sakerkute, West Tripura, Age
53 years

13. Sri Krishna Ch. Das,

S/o Paresh Das, Hapania, R/o ONGC, Amtali, West Tripura, Age 48 years

14. Smt. Puspa Rani Shil,

W/o Bishu Shil, R/o Dhaleshwar Road No-1, Agartala, West Tripura, Age 49 years

15. Smt. Arati Roy,

W/o Lt. Niranjana Roy, R/o A.G. Quarter, Kunjaban, Agartala, West Tripura, Age 51 years

16. Smt. Laxmi Rani Sutradhar,

W/o Lt. Purna Lal Sutradhar, R/o: Vill A.D. Nagar, Road No.15, P.O. Sorba Dharma Mission, Age 55 years.

17. Smt. Ranu Saha,

W/o Lt. Arabindu Saha, R/o: Vill Shubash Nagar, P.O. East-Pratap Garh, West Tripura, Age 51 years

18. Smt. Kalpana Sarkar,

W/o Sushil Sarkar, R/o: Vill Charipara, AD Nagar, West Tripura, Age 47 years.

19. Smt. Soba Rani Shil,

W/o Sunil Shil, R/o: Vill Bhatti Abhoynagar, Age 50 years

20. Smt. Jyotsna Ghosh,

W/o Sukumar Ghosh, R/o: Vill Vidya Sagar Palli, Amtali, Age 54 years

21. Smt. Golapi Biswas,

W/o Gouranga Biswas, R/o: Vill Kismatkuri, P.O. Ishan Chandra Nagar, P.S. Amtali, West Tripura, Age 53 years

22. Smt. Dipu Debnath Banik,

W/o Lt. Mahendra Debnath, R/o Bardowali, Agartala, West Tripura, Age 59 years

23. Smt. Laxmi Dhanuk,

W/o Bachu Dhanuk, R/o: IGM Harijan Quarter, Rabindra Palli, Agartala, West Tripura, Age 45 years

24. Smt. Prema Dhanuk,

W/o Durga Prasad Dhanuk, R/o IGM Harijan Quarter, Rabindra Palli, Agartala, West Tripura, Age 49 years

25. Smt. Reba Dey,

W/o Sunil Dey, R/o: Vill Netaji Nagar, P.O. ONGC, Agartala, West Tripura, Age 47 years

26. Smt. Khudeja Begam,
W/o Ahid Mia, R/o: Vill South Ram Nagar, Agartala, West Tripura, Age 53
years

..... Appellant(s)

V E R S U S

1. The State of Tripura,
(To be represented by) the Secretary, Health Department, Govt. of Tripura,
New Capital Complex, New Secretariat Building, Agartala, West Tripura,
PIN 799001.

2. The Director of Health Services,
Govt. of Tripura, P.N. Complex, Agartala, West Tripura

3. The Secretary,
Finance Department, Govt. of Tripura, New Capital Complex, New
Secretariat Building, Agartala, West Tripura, PIN 799001.

..... Respondent(s)

For Appellant(s)	:	Mr. P. Roy Barman, Senior Advocate. Mr. Kawsik Nath, Advocate.
For Respondent(s)	:	Mr. Kohinoor N. Bhattacharya, G.A.
Date of hearing & delivery of Judgment	:	<i>13th May, 2024.</i>
Whether fit for reporting	:	NO

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

JUDGMENT & ORDER (ORAL)

Heard Mr. P. Roy Barman, learned senior counsel for the
appellant-petitioners. Also heard Mr. Kohinoor N. Bhattacharya, learned G.A.
for the respondents.

[2] The delay of 100 days in filing the appeal is condoned being not
opposed by the other side and the matter is heard on merit.

[3] The judgment dated 08.12.2023 passed by the learned Writ Court in WP(C) No.255 of 2022 is under challenge in this appeal whereby learned Single Judge rejected the prayer for regularization of the appellant-petitioners.

[4] The appellant-petitioners with others were initially engaged as Slip workers/Casual workers/Drivers and Group-D on different occasions during the year 1983 to 1997 under the respondents and were receiving their pay as daily wages. Thereafter, the Director of Health Services, Government of Tripura declared all the appellants as Casual workers notionally w.e.f. 01.01.2010 vide memorandum dated 30.03.2010 (Annexure 21 of the writ petition) and subsequent memorandum dated 06.05.2011 (Annexure 23 of the writ petition). The appellants submitted representations to the Director of Health Services for regularization of their service in Group-D post on completion of 10 years thereafter. As stated by the appellants, all the representations were exactly similar and identical in nature and therefore, one of such representation as a sample was submitted before the learned Writ Court under Annexure 29. In support of claim for regularization of service, the appellants also relied on memorandum dated 01.09.2008 (Annexure 24 of the writ petition) and memorandum dated 21.01.2009 (Annexure 25 of the writ petition), both issued by the Finance Department, Government of Tripura. But getting no response in respect of their representations, ultimately they filed the writ petition with the following prayers:

- (i) *Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to regularize the service of the Petitioners in Group-D posts on completion of 10 years service as Casual Worker/Slip Worker, w.e.f., the date on which the Petitioners completed 10 years as Casual Worker/Slip Worker.*

- (ii) *Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued modifying the Memorandums, dated 30.03.2010 & 06.05.2011, issued by the Director of Health Service, Govt. of Tripura, to the extent, that, all the Petitioners were serving as Casual Worker w.e.f. the first day when they joined their service under the Respondents.*
- (iii) *Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to pay monthly wages/remuneration to the Petitioners at par with the minimum of the pay scale of Group-D post.*
- (iv) *Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and or direction/directions of like nature shall not be issued whereby quashing and cancelling the Memo, dated 31.07.2018, issued by the Under Secretary, Govt. of Tripura, Finance Department.*
- (v) *Make the rules absolute.*
- (vi) *Call for records.*
- (vii) *Pass any further Order/Orders as this Hon'ble High Court considered fit and proper.*

[5] Admittedly, abovesaid memorandums based on which the appellants and other writ petitioners (not appellants herein) lodged their claim for regularization were repealed by the State Government vide memorandum dated 31.07.2018 (Annexure 26 of the writ petition). While rejecting the claim for regularization, learned Writ Court, inter alia, observed as follows:

“7. After perusal of the documents annexed with the writ petition, I find that the petitioners were engaged as Slip Workers. They were engaged as Casual workers vide Memorandum dated 30.03.2010 w.e.f. 01.01.2010. The petitioners have failed to justify that they had been appointed against any regular sanctioned vacant posts. The petitioners had been appointed illegally without following the established procedure of law. Furthermore, the petitioners ought to have approached the court within the realm of the scheme and during the existence of the scheme before the date when those were repealed. The delayed approach and lackadaisical attitude of the petitioners would not entail them to get the benefit of repealed schemes. In the opinion of this Court, this petition is absolutely barred by delay and laches. Moreso, the nature of appointment of the petitioners is not only irregular but illegal also. Further, regularization is not a matter of right but a right to be considered by

the employer/Government and equality clause enshrined in Indian Constitution must be followed in sensu stricto. Another important aspect to be noticed that the petitioners have failed to place any material that at present there are sanctioned vacant posts exist in the Health department, Government of Tripura for their absorption or regularization.

8. Above all, equality clause as enshrined under Articles 14 and 16 of the Constitution of India in the matter of public employment cannot be frustrated or flouted for an indefinite period. As per direction of the Apex Court in **State of Karnataka vs. Uma Devi (3) and Ors.**, reported in (2006) 4 SCC 1, the State Government had formulated guidelines for regularization of Casual/Contingent/Daily Rated workers in the year 2008 with revised guidelines, and, those were continued for long 10(ten) years; however, those were repealed by a policy decision of the Government in the year 2018.

9. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly, judgment passed on wrong premise in favour of one individual does not entitle other to claim similar benefits.

10. I have also considered the directions given by the Constitutional Bench of the Hon'ble Apex Court in the case of **Uma Devi(3)(supra)** wherein at para 53 it was held thus:-

*“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore vs. S.V. Narayanappa, reported in (1967) 1 SCR 128, R.N. Nanjundappa vs. T. Thimmiah, reported in (1972) 1 SCC 409, B.N. Nagarajan vs. State of Karnataka, reported in (1979) 4 SCC 507, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in **duly sanctioned posts** but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice,*

need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

11. A Division Bench of this Court in **State of Tripura vs. Suprava Debnath**, reported in **2023 SCC Online Tri 833**, did not find any illegality or arbitrariness in the policy decision of the government repealing the policy of regularization formulated in the year 2008.

12. Another noticeable feature is that even the dates of engagements of the petitioners were considered w.e.f. 01.01.2010, they have not completed 10(ten) years of service as Casual Workers before 2018 when all the guidelines for regularization had been repealed by the said policy decision of the Government.

13. This Court in **WP(C) No.5 of 2023** titled as **Sri Satya Ranjan Dey and Anr. Vs. The State of Tripura and 4 Ors.** decided on 06.09.2023 had passed a detailed order referring many judgments of the Hon'ble Apex Court and held that the petitioners of that writ petition were not entitled to get their services regularized and therefore, dismissed the writ petition.

14. Thereafter, a Division Bench of this Court (presided over by Justice Aparesh Kumar Singh, Chief Justice and myself) in **Suprava Debnath (supra)** had an occasion to deal with the similar issue on **regularization** wherein after observing all factual and legal aspects, by a detailed order had dismissed the writ petition.

15. Accordingly, I do not find any merit in the present writ petition and the same stands dismissed.”

[6] Mr. P. Roy Barman, learned senior counsel contends that even if the claim of regularization of the appellants was rejected by the learned Writ Court, the appellants are entitled to equal pay for equal work in view of the decision rendered by the Apex Court in **State of Punjab and others vs. Jagjit Singh and others [(2017) 1 SCC 148]**. Learned senior counsel further argues that vide memorandum dated 11.05.2016 (Annexure 27 of the writ petition) issued by the Under Secretary to the Government of Tripura, Health and Family Welfare Department, with the concurrence of the Finance Department it was ordered that Casual workers who were having the qualification of Madhyamik pass out and above were to be treated as Casual worker (Gr-C) and were entitled to existing wage rate of DRW (Gr-C) and the Casual workers who were

below that educational qualification were to be treated as Casual worker (Gr-D) having entitled to existing wage rate of DRW (Gr-D). Learned senior counsel continues his submission that there are vacant posts lying in the Department of respondents and the appellants are also discharging similar duties and responsibilities of Group-D employees due to acute shortage of staffs and therefore, they are entitled to get the benefit of equal pay for equal work and monthly wages/remuneration which is not less than the minimum of pay scale of Group-D post.

[7] Mr. Kohinoor N. Bhattacharya, learned G.A. however, contends that the scheme of regularization itself was withdrawn in the year 2018 and as such, the appellants were not entitled to regularization of their services and therefore, learned Single Judge was completely justified in rejecting their prayers. Learned G.A. further argues that all the appellants were engaged without concurrence from the Finance Department as a stopgap measure in absence of regular employees, for smooth running of day to day work of the hospitals and even after so, they were declared as a Casual worker w.e.f. 01.01.2010. According to learned G.A., the appellants are, therefore, not entitled to get any relief as prayed for by them.

[8] We have considered rival contentions of the parties and also perused the record.

[9] As it appears, the regularization scheme was already withdrawn by the Government vide memorandum dated 31.07.2018 (Annexure 26 of the writ petition) i.e. even prior to completion of 10 years of service of appellants as Casual workers and as such, they cannot now claim for regularization of their services. We are, therefore, in agreement with the views taken by the learned

Single Judge in the impugned judgment. So far as the claim for equal pay for equal work is concerned, from the sample representation of one of the appellant (Annexure 29 of the writ petition), it appears that no such claim was raised by the appellants before the respondents on any occasion and for the first time it was claimed before the learned Writ Court. Learned Writ Court also in the impugned judgment did not give any decision on their said claim for such equal pay with reference to prayer No.(iii) of the writ petition.

[10] In view of above, we deem it proper, for ends of justice, to give an opportunity to the appellants to make representation to the respondents in respect of their claim of equal pay for equal work furnishing all the related materials in support of their such claim within a period not later than 3(three) weeks and the concerned respondents will dispose of such representations by reasoned order within 6(six) weeks thereafter. Needless to say, the appellants will have the liberty to approach the appropriate forum in case they are not satisfied with the decision of the respondents in this regard. With these observations, this writ appeal is disposed of without any interference with the impugned judgment passed by the learned Writ Court.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ