

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.43 of 2024

- 1. Namita Debnath,**
W/o Sri Babul Das, R/o: Vill Datta Para, P.S. Jogendranagar, Agartala, West Tripura, Aged 51 years
- 2. Sipra Acharjee,**
W/o Santi Acharjee, R/o: Vill: Jogendranagar, Bankumari, Agartala, West Tripura, Aged 49 years
- 3. Rita Debnath,**
W/o Nimai Debnath, R/o: Vill Champamura, P.O. Old Agartala, West Tripura, Aged 45 years
- 4. Aruna Bhowmik,**
W/o Manoranjan Bhowmik, R/o: Vill Madhupur, I.C. Nagar, Agartala, West Tripura, Aged 56 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	:	13th May, 2024.
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 255 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 06.07.2023 passed by the learned Writ Court in WP(C) No.466 of 2022 is under challenge in this appeal whereby learned Single Judge rejected the prayer for regularization for the appellant-petitioners.

[4] The appellant-petitioners with others were initially engaged as Slip workers/Casual worker on different occasions during the year 1994 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 15 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 20. In support of claim for regularization of service, the appellants also relied on memorandum dated 01.09.2008 (Annexure 16 of the writ petition) and memorandum dated 21.01.2009 (Annexure 17 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 Memorandum, dated 30.03.2010, 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 18 of the writ petition). While rejecting the claim for regularization, learned Writ Court, inter alia, observed as follows:

“ In my opinion, the petitioners have completed 10 years of service in the year 2020 when no scheme for regularization exists.

In the above conspectus, I find no merit in the present writ petition. However, the respondents may consider their prayer for regularization keeping in mind that the petitioners have rendered their valuable service for considerable period of time subject to availability of sanctioned vacant posts commensurate to their education qualifications.

Accordingly, the instant writ petition stands dismissed in the above terms.”

[6] Mr. P. Roy Barman, learned senior 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 there are vacant posts lying in the Department of the respondents and the appellants are also discharging similar duties and responsibilities of Group-D employee 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 18 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 (Annexure 20 of the writ petition) of one of the writ petitioner (not appellant herein), 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] However, learned Writ Court in the impugned judgment has observed that respondents may consider the prayer for regularization of the writ petitioner keeping in mind that the petitioners have rendered their valuable service for considerable period of time subject to availability of sanctioned vacant post commensurate to their educational qualification. We are not interfering with the above said observation of learned Writ Court. In addition thereto, we are giving an opportunity to the appellants to make further

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 along with the said direction of the Writ Court regarding consideration of their prayer for regularization by a reasoned order within 6(six) weeks thereafter. Needless to say, the appellants will have the liberty to approach 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**