

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

WA No. 250 of 2021

Connected 7with

1. Sri Krishna Chakraborty.

.....Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 30 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 31 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 32 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

. Respondents

WA No. 33 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 34 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 35 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 36 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 37 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 38 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 39 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 40 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 41 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 42 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 43 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 44 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 45 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

WA No. 46 of 2022

1. Sri Krishna Chakraborty.

..... Appellant

-VERSUS-

1. The State of Tripura and Others.

..... Respondents

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

For Appellant(s)	:	Mr. A. Bhowmik, Advocate.
For Respondent(s)	:	Mr. K. De, Addl. G.A. Mr. G. K. Nama, Advocate. Mr. S. Lodh, Advocate.
Date of hearing & delivery of judgment and order	:	26.06.2024
Whether fit for reporting	:	YES

JUDGMENT & ORDER [ORAL]

[T. Amarnath Goud, J]

Heard Mr. A. Bhowmik, learned counsel appearing for the appellant also heard Mr. K. De, learned Addl. G.A. for the official respondents and Mr. G. K. Nama & Mr. S. Lodh, learned counsel appearing for the private respondents.

[2] All these writ appeals are consolidated for disposal by a common judgment and order inasmuch as, the controversy is structured on facts which resemble. The present appeals have been filed under Chapter-VA of the Gauhati High Court Rules (as the said rules were in force till the Tripura High Court Rules came into existence in 2023) read with Article-226 of the Constitution of India assailing the judgment and order dated 02.09.2019 passed in WP(C) No.1497 of 2017 and other batch matters by the learned Single Judge of this Court.

[3] The writ petitioners are the respondents in these appeals and so the appellants are the respondents in the writ petitions. The appellant was a private respondent No. 15 in WP(C) No.1497 of 2017 & batch of Writ Petitions under Article 226 of the Constitution of India filed seeking the following reliefs:

“(1) Issue rule asking the respondents to show cause as to why the decision of the Council of Ministers held on 17.05.2017 in respective of Item No.5 and consequential memorandum dated 02.06.2017 regularizing the ad-hoc appointees by overriding the judicial order, and affecting the seniority of the petitioner and similar others should not be declared bad in law and accordingly quashed.

(2) Issue rule asking the respondents to show cause as to why they should not be prevented from taking away the vested/accrued right of the petitioner with regard to seniority in his grade by any decision taken by the Council of Ministers, under the rules of executive business.

(3) After hearing the parties and being satisfied about the position of law make the rule in terms of (1) and (2) above absolute.

(4) In the meantime, the Hon'ble Court would kindly pass an interim order of stay in effecting the memorandum dated 02.06.2017 by which the ad-hoc appointees have been regularized taking away the right of the petitioner accrued over the last 17 years particularly by overriding the judicial verdict of the High Court in his regard."

[4] The brief facts of the present case is that the appellant was appointed as Supervisor Rural Functional Literacy Project, (for short RFLP) under Directorate of Social Welfare and Social Education, Govt. of Tripura on 20.12.1991 on ad-hoc basis and thereafter the service of the appellant were regularized vide memo dated 02.06.2017 from the date of his initial engagement i.e. from 1991 after receiving approval from the Council of Ministers vide the meeting of the Council of Ministers dated 17.5.2017 to regularize the services.

[5] The appellant is serving as a Supervisor (RFLP) under Directorate of Social Welfare and Social Education, Govt. of Tripura and since then the appellant was discharging his services. In the instant appeal, the un-official respondent Nos. 3 to 20 were already appointed as Supervisor, Integrated Child Development Services [for short ICDS], Directorate of Social Welfare and Social Education, Govt. of Tripura.

[6] The official respondent by way of memo dated 02.06.2017 issued seniority list and the same is under challenged contending that the respondents in the writ are shown as senior above the writ petitioners. Hence, the writ petitions were filed.

[7] After hearing the learned counsel appearing for the parties and having gone through the material evidences on record, the learned Single Judge, has observed in W.P. (C) 1497 of 2017 and other batch matters and passed orders dated 02.09.2019.

[8] Being aggrieved by the same, the appeals have been preferred.

[9] Mr. A. Bhowmik, learned counsel appearing for the appellant has submitted that the post of Supervisor, RFLP, Directorate of Social Welfare and Social Education, Govt. of Tripura is completely a distinct post from the post of Supervisor, ICDS, Directorate of Social Welfare and Social Education, Govt. of Tripura. The petitioners in the writ petitions, who were serving as Supervisor (ICDS) had no *locus-standi* to challenge the regularization of appellant and fixing the seniority amongst the said class. Such challenge is not akin to service jurisprudence. More so, the appointment of the appellant has been made under RFLP Rules appointments of Supervisors under ICDS are separate Rules and selection is through Tripura Public Service Commission [for short TPSC] and separated with fixation under the same rules.

[10] The writ petitioners were appointed by memorandum dated 05.08.2000 duly following the Recruitment Rules of Supervisor (ICDS) dated 30th September, 1997 through selection process of the Tripura Public service Commission in terms of the Tripura Public Service Commission (exemption from Consultation) Regulations, 1973. Regulation-4 of said rules 1973 provide the post/services for which the State of Tripura is exempted from consultation including direct recruitment.

[11] He contended that earlier ad-hoc appointees in the post of Social Education Organizer [for short SEO] has been regularized and thereafter promoted to the post of Child Development Project Officer [for short CDPO] and the entire process occurred after the appointment of the respondent as Supervisor, ICDS but the respondent had never took any plea nor raised any objection against the regularization of the ad-hoc appointees in the post of SEO. The appellant was appointed as Supervisor, RFLP which is a completely distinct post from the post of

Supervisor, ICDS and therefore, the regularization of the appellant cannot be challenged in writ.

[12] Mr. Bhowmik, learned counsel appearing for the appellant has submitted that the learned Single Judge has failed to appreciate that the appellant was appointed as Supervisor (RFLP) on 20.12.1991 on ad-hoc basis and at that point of time the post of Supervisor (RFLP) was under a Centrally sponsored Scheme which was subsequently discontinued by the Govt. of India, Ministry Human Resource Development, Department of Education during the period from 1991 to 1992 and thereafter the same was transferred to State plan under State Audit Education Programme w.e.f. 1st April, 1992.

[13] The post of Supervisor (RFLP) and Supervisor (ICDS) have common promotional avenue to the post of Child Development Project Officer and as such there is a common seniority list for the post of Supervisor (RFLP) and Supervisor (ICDS) and following para-19 of the judgment of the learned Single Judge, the appellant has been placed at Sl. No. 212 of the seniority list ignoring the service rendered by the appellant on ad-hoc basis. Vide the impugned judgment and order the learned Single Judge of this Court although held that the writ petitioners had no indefeasible right to challenge the seniority list of the appellant, but again in the Judgment, held that in case of any promotional exercise the writ petitioners are to be considered senior to appellant and accordingly the ad-hoc service period of the appellant has not been counted towards seniority of the appellant and as such, the findings are incorrect and contradictory. He further placed reliance on a decision of the Hon'ble Apex Court in *Gulabrao Keshavrao Patil and Others v. State of Gujarat and Others*, reported in (1996) 2 SCC 26.

[14] Mr. K. De, learned Addl. G.A. appearing for the respondent-State has submitted that no government employee has any vested/accrued right to claim seniority in service and the petitioners holding different post is disentitled to claim their grievance against the regularization.

Right to seniority does not create any accrued or vested rights and the continuations made cannot be permitted as agenda for regularization of the Supervisor (RFLP) under Directorate of Social Welfare and Social Education, Government of Tripura as recorded in item No.5 of the memorandum dated 17.05.2017 and consequential memo regularization of the services cannot be challenged.

[15] Mr. G. K. Nama, learned counsel for the respondents/writ petitioners in support of his case contended that writ petitioners are Supervisors in S.W. department and are appointed prior to appellants and they cannot claim seniority upon petitioners by way of regularization considering the date of ad-hoc appointment and thus, prayed to set aside the Council of Ministers decision in regularization and the consequential memo of official respondent in fixing the seniority while regularizing services. He has placed his reliance on a decision of the Hon'ble Apex Court in *Malook Singh and Others v. State of Punjab and Others*, wherein, the Court has held thus:

“20. The law on the issue of whether the period of ad hoc service can be counted for the purpose of determining seniority has been settled by this Court in multiple cases. In *Direct Recruits* (supra), a Constitution Bench of this Court has observed:

“13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in *Patwardhan* case [(1977) 3 SCC 399: 1977 SCC (L&S) 391: (1977) 3 SCR 775] was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after

considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary.....

47. To sum up, we hold that

(A) Once an incumbent is appointed to a post according to a rule, his seniority has to be counted from the date of appointment and not according to date of his confirmation. The corollary to the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account considering the seniority.”

[Emphasis supplied]

The decision in *Direct Recruits* (supra) stands for the principle that ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgment dated 6 December 1991 on *Direct Recruits* (supra) to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. This principle laid down in *Direct Recruits* (supra) was subsequently followed by this Court in *Keshav Chandra Joshi v. Union of India*¹⁵. Recently a two judge Bench of this Court in *Rashi Mani Mishra v. State of Uttar Pradesh*¹⁶, of which one of us (Justice DY Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable Rules, “substantive appointment” does not include ad hoc appointment and thus seniority which has to be counted from “substantive appointment” would not include ad-hoc service. This Court also clarified that the judgement in *Direct Recruits* (supra) cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad hoc appointments made as stop gap arrangements do not render the ad-hoc service eligible for determining seniority. This Court speaking through Justice MR Shah made the following observations:

“36. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, vis-à-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent re-determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of

their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularization in the year 1989 is to be restored.

37. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad hoc and subsequently they were confirmed and to that this Court observed and held that where appointments made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following due procedure as required under the 1979 Rules and after their names were recommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the "substantive appointments". Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules."

[16] He also placed his reliance i.e. in ***Rashi Mani Mishra and Others v. State of Uttar Pradesh and Others***, wherein, the Hon'ble Apex Court has observed as under:

"10. Similarly, the decision of this Court in the case of Rudra Kumar Sain (supra), relied upon by the learned counsel appearing on behalf of the ad hoc appointees also shall not be applicable to the facts of the case on hand. In the case before this Court, the promotees appointed on ad hoc were continued for fairly long periods and their appointments were made after due consultation with, or approval of Service Commission, and therefore their appointments were held not to be ad hoc or fortuitous or stopgap. It is to be noted that in the present case when the ad hoc appointees were appointed in the year 1985, there was no consultation with the UPSC and as such there was no recommendation by the UPSC. Their services came to be regularised as per the 1979 Rules and after they were selected by the Selection Committee constituted under the 1979 Rules, which specifically provides that for the purpose of regularisation of ad hoc appointments, the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary. It is also to be noted that when the ad hoc appointees were appointed in the year 1985,

they were appointed on the basis of the recommendations of the Selection Committee constituted for ad hoc appointments and when subsequently their services were regularised and they were appointed in the year 1989, they were appointed by the order of Governor. This is one additional ground to hold that their substantive appointments can be said to be only from the date of their regularisation/appointment made in the year 1989 after their names were recommended by the Selection Committee constituted under the 1979 Rules and their services were regularised as per the 1979 Rules after following the procedure as required under the 1979 Rules, i.e., in the year 1989. Therefore, their seniority is to be counted only from 23.02.1989, the date of their regularisation and the services rendered by the ad hoc appointees prior thereto, i.e., from the date of their initial appointments in the year 1985 is not to be counted for the purpose of seniority, vis-à-vis, the direct recruits appointed prior to 1989.”

[17] In *Keshav Chandra Joshi and Others v. Union of India and Others*, reported in (1992) Supp (1) SCC 272, the Hon’ble Apex Court has observed that:

“24. It is notorious that confirmation of an employee in a substantive post would take place long years after the retirement. An employee is entitled to be considered for promotion on regular basis to a higher post if he/she is an approved probationer in the substantive lower post. An officer appointed by promotion in accordance with Rules and within quota and on declaration of probation is entitled to reckon his seniority from the date of promotion and the entire length of service, though initially temporary, shall be counted for seniority. Ad-hoc or fortuitous appointments on a temporary or stop gap basis cannot be taken into account for the purpose of seniority, even if the appointee was subsequently qualified to hold the post on a regular basis. To give benefit of such service would be contrary to equality enshrined in Article-14 read with Article-16(1) of the Constitution as un-equals would be treated as equals. When promotion is outside the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotes appointed in excess of the quota may work out hardship but is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles -14 and 16(1). Therefore, the rules must be carefully applied in such a manner as not to violate the rules or equality assured under Article-14 of the Constitution. This Court interpreted that equity is an integral part of Article-14. So every attempt would be made to minimize, as far as possible, inequity. Disparity is inherent in the system of working out integration of the employees drawn from different source, who have legitimate aspiration to reach higher echelons of service. A feeling of

hardship to one, or heart burning to either would be avoided. At the same time equality is accorded to all the employees.”

[18] Mr. S. Lodh, learned counsel for the other private respondents in the appeals while adopting the arguments of Mr. Nama, learned counsel further contended that the writ lies against decision of Council of Ministers and in support of his case has placed his reliance in a decision of the Hon’ble Apex Court in *Madhya Pradesh Special Police Establishment v. State of Madhya Pradesh and Others*, reported in 2004 AIR SCW 6843, wherein, the Court has held as under:

“28. The Office of the Lokayukta was held by a former Judge of this Court. It is difficult to assume that the said High Authority would give a report without any material whatsoever. We, however, do not intend to lay down any law in this behalf. Each case may be judged on its own merits. In this case, however, we are satisfied that the Lokayukta made a report upon taking into consideration the materials which were placed or received by him. When the Council of Ministers takes a decision in exercise of its jurisdiction it must act fairly and reasonably. It must not only act within the four-corners of the statute but also for effectuating the purpose and object for which the statute has been enacted. The Respondent No. 4 in each appeal are to be prosecuted under the Prevention of Corruption Act wherefor no order of sanction is required to be obtained. A sanction was asked for and granted only in relation to an offence under Section 120B of the Indian Penal Code. It is now trite that it may not be possible in a given case even to prove conspiracy by direct evidence. It was for the Court to arrive at the conclusion as regard commission of the offence of conspiracy upon the material placed on records of the case during trial which would include the oral testimonies of the witnesses. Such a relevant consideration apparently was absent in the mind the Council of Ministers when it passed an order refusing to grant sanction. It is now well-settled that refusal to take into consideration a relevant fact or acting on the basis of irrelevant and extraneous factors not germane for the purpose of arriving at the conclusion would vitiate an administrative order. In this case, on the material disclosed by the Report of the Lokayukta it could not have been concluded, at the prima-facie stage, that no case was made out.

29. It is well-settled that the exercise of administrative power will stand vitiated if there is a manifest error of record or the exercise of power is arbitrary. Similarly, if the power has been exercised on the non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous.

30. We have, on the premises aforementioned, no hesitation to hold that the decision of the Council of Ministers was ex facie irrational whereas the decision of the Governor was not. In a situation of this nature, the writ court while exercising its jurisdiction under Article 226 of the Constitution of India as also this Court under Articles 136 and 142 of the Constitution of India can pass an appropriate order which would do complete justice to

the parties. The High Court unfortunately failed to consider this aspect of the matter.”

[19] Heard both sides.

[20] Now, deciding the veracity of the memorandum dated 02.06.2017 which have been issued vide proceeding in favour of the 12 Supervisors (ICDS) proceeding 02.06.2017, in favour of the 2 numbers Social Education Organizer (M), proceeding dated 02.06.2017 in favour of 3 numbers of Supervisor (RFLP) and proceeding dated 02.06.2017 in favour of 9 persons. It is seen from the said proceedings that these employees under the said memorandum are falling under the category of Supervisor under separate categories i.e. ICDS and RFLP and so on.

[21] Method of recruitment and qualification necessary for appointment to the post of Supervisor (ICDS), Govt. of Tripura and republish the amended rules in the schedule.

**“RECRUITMENT RULES FOR THE POST OF SUPERVISOR (ICDS) UNDER
EDUCATION DEPARTMENT: GOVERNMENT OF TRIPURA.**

1. Name of post	Supervisor (Integrated Child Development Services)
2. No. of posts	153 (plus additional) posts as and when created
3. Classification	Group-C, Non-Gazetted
4. Scale of pay	Rs.1300-50-1700-55-2140-60-3220/- subject to revision by the Govt. from time to time.
5. Age limit for direct recruitment	37 years. relaxable by 5 years in case of SC/ST candidates and Government servants. Age is also relaxable up to 42 years for Anganwadi Workers.
6. Whether selection post or non-selection post	Selection post.
7. Educational and other qualifications required for direct recruits	Essential: Graduate of a recognized University. Desirable (i) Having at least 5(five) years experience in the field or women & child Welfare. (ii) Knowledge of Bengali/Kak-Barak.
8. Whether age & Educational qualifications prescribed for direct recruits will apply in the case of promotes.	Educational qualification No. Age - No.
9. Period of probation, if any	2 (two) years
10. Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods	a. 50% by direct recruitment b. 50% by promotion failing which by direct recruitment.
11. In case of recruitment by promotion/deputation/transfer, grades from which promotion/ deputation/transfer to be made	By Promotion: From common seniority list of junior Social Education Organizer/Junior Social Education Organiser (Female) in the following manner. a. 40% vacancies against promotion quota from graduate employees having 5(five) years experience. b. 60% vacancies against promotion quota from Madhyamik or equivalent passed employees having 8(eight) years experience.
12. If a D.P.C. exist, what is its composition	Group-C, Non-Gazetted.
13. Circumstances in which T.P.S.C. is to be consulted in make recruitment	As required under TPSC (Exemption from consultation) Regulation, 1973.
14. Savings	Nothing in these rules shall affect reservation & other concessions required to be provided for SC/ST & other special categories of persons in accordance with orders issued by the Central/State Government from time to time in this regard.
15. Repeal	The existing Recruitment Rules for the post of Supervisor ICDS notified by the Govt. vide No.F.3(16)-DSWE/ESTT/84 dated 09.04.97 Social Welfare & Social Education

	Department Stands repealed.
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“RECRUITMENT RULES FOR THE POST OF SUPERVISOR UNDER FARMERS FUNCTIONAL LITERACY PROJECT UNDER THE EDUCATION DEPARTMENT: GOVERNMENT OF TRIPURA.

1. Name of post	Supervisor
2. No. of posts	23 (plus additional) posts as and when Sanctioned
3. Classification	Class-III, Non-Gazetted
4. Scale of pay	Rs.325-15-445-20-565-25-665/- E.B.after 8 th & 15 th stages
5. Whether selection post or non-selection post	Selection
6. Age limit for direct recruitment	Maximum 35 years (Relaxable by 5 years in case of ST/SC candidates & Government servants.
7. Educational and other qualifications required for direct recruitments	Essential: degree from recognized University. (Relaxable up to matriculate or equivalent in case of ST/SC candidates) Desirable (i) Knowledge of Bengali but preference will be given to him who knows Kok-Borak.
8. Whether age & Educational qualifications prescribed for direct recruits will apply in the case of promotes.	Age Qualification : Not applicable
9. Period of probation, if any	2 (two) years
10. Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods	Direct recruitment
11. In case of recruitment by promotion/transfer, grades from which promotion/ transfer to be made	Does not arise
12. If a D.P.C. exist, what is its composition	Does not arise
13. Circumstances in which T.P.S.C. is to be consulted in make recruitment	As required under TPSC (Exemption from consultation) Regulation, 1975.
14. Savings	Nothing in these rules shall effect reservation & other concessions required to be provided for SC/ST & other special categories of persons in accordance with orders issued by the Central Government/ State Government from time to time in this regard.

As seen from the ICDS recruitment Rules the method of recruitment is by direct 50% and promotion 50%. Further as per RFLP Rules the method of recruitment is only by direct rectuitment.

[22] In *Gulabrao Keshavrao Patil and Others v. State of Gujarat and Others*, reported in (1996) 2 SCC 26 wherein, the Hon’ble Apex Court has been held thus:

- “17. The same view was reiterated in *State of Kerala v. A. Lakshmikutty & Ors*, reported in (1986) 4 SCC 632. It would thus be clear that before an order or action can bind the Government it must be drawn in the name of the Governor as envisaged in Article 166 [1] and [2] read with the Business Rules and must be communicated to the affected person. Until then, the action of the Government is not final. Before it is duly done, Chief Minister has power to call for any file and would have it re-examined and decision taken.
18. It would thus be seen that the decision of the Revenue Minister on July 6, 1973 is not final because the Urban Development Department did not accept or agree to the decision taken by the Minister for Revenue. As stated earlier, when the matter was brought by the Ministry of Urban Development and Housing Department to the notice of the Chief Minister, who holds ultimate responsibility and duty to report to the Governor and accountable to the people, the Chief Minister, in light of instruction 10,

should place the decision necessarily before the Council or the Cabinet, as the case may be, and then may be decided by the Chief Minister. It is seen that no decision has been taken by the Chief Minister under instruction 10. Therefore, under Section 5-A (2), no decision was taken to proceed further under Section 6 or to drop the acquisition proceedings. The High Court, therefore, was right in rejecting the writ petition as being not proper for interference.”

[23] Upon appointment of the appellant vide memo dated 20.12.1991, the service of the appellant was continuous and without any break and thereafter a proposal to regularize the appellant along with others holding different posts was placed before the Council of Ministers. The Council of Ministers in its meeting held on 17th May, 2017 vide Item No.5 approved the regularization of the appellant along with others. Thereafter vide memorandum dated 02.06.2017 the service of the appellant was regularized w.e.f. the date of the appointment of the appellant so that the appellant along with others get consequential benefits of seniority and pension. It is highlighted that the service of the Appellant was regularized along with others holding different posts. However two persons were holding the post of Supervisor (RFLP) like the appellant.

[24] It is seen from the record that challenging the decisions of the Council of Ministers dated 02.06.2017 wherein, the full text of the cabinet proceedings are also not placed on record and only the portion which according to the petitioner is relevant is enclosed. The source of providing such cabinet proceedings before this Court, are also not mentioned in the affidavit. Neither it is obtained under RTI or by way of any recognized procedure. Insofar as the cabinet decision is concerned, it only decided that they are only regularizing the services but the cabinet has not indicated with regard to their fixing of seniority.

[25] For the purpose of reference, let us look into the minutes of the Cabinet Ministers and the relevant memos.

**“MINUTES OF THE MEETING OF THE COUNCIL OF
MINISTERS HELD ON 17TH MAY, 2017 AT 11-00 A/A IN THE
CABINET ROOM.**

.....

Item No.5: Proposal for regularization of 19 (nineteen) persons appointed on Ad-hoc basis in the post of Supervisor, Rural Functional Literacy Programme (RFLP), Social Education Organizer (SEO), Superintendent of Home and Supervisor, Integrated Child Development Services (ICDS) under Social Welfare & Social Education – regarding. (Education (SW & SE) Deptt. File No. F.3(51)-DSWE / ESTT / 2014(L) / 1876 (20) Dt.11.05.2017.

Proposal of the Department at para-5 of the Cabinet Memorandum is approved.

.....”

Government of Tripura
Directorate of Social Welfare & Social Education
Ujan Abhoynagar, Agartala
Pin-799005

No.F.3(not legible)-DSWE/ESTT/2014(L)/2281(not legible) Dated,
 Agartala 02.06.2017

MEMORANDUM

Subject: Regularization of Ad-hoc appointed Supervisor (ICDS) under the Department of Social Welfare & Social Education, Govt. of Tripura.

The ad-hoc appointment of the following 12 Nos. Supervisors (ICDS) who were appointed during the year 1991-92 on ad-hoc basis under ICDS Scheme are hereby regularized in their services w.e.f. the date of their appointment (year 1991-92), so that they can get the consequential benefit of seniority and pensions.

Sl. No.	Name of the staff	Designation	Present place of posting
1.	Sri Rajt Roy	Supervisor (ICDS)	Jirania ICDS Project, West Tripura
2.	Smt. (not legible)	Supervisor (ICDS)	Dukli ICDS Project, West Tripura
3.	Sri Biswajit Sengupta	Supervisor (ICDS)	Hezamara ICDS Project, West Tripura
4.	Smti. Helena Datta	Supervisor (ICDS)	Jirania ICDS Project, West Tripura
5.	Sri Sudhir Ch. Das	Supervisor (ICDS)	Kakraban ICDS Project, South Tripura
6.	Sri (not legible)	Supervisor (ICDS)	Dharmanagar ICDS Project Dhalai Tripura
7.	Sri Brajendra Debnath	Supervisor (ICDS)	Panisagar ICDS Project, North Tripura
8.	Sri Debashish Chowdhury	Supervisor (ICDS)	Pecharthal ICDS Project, Unakoti Tripura
9.	Sri (not legible)	Supervisor (ICDS)	Kumarghat ICDS Project, Unakoti Tripura
10.	Sri Bidhan Ch. Nath	Supervisor (ICDS)	Panisagar ICDS Project, North Tripura
11.	Nirmalendu Bikash Paul	Supervisor (ICDS)	Ramnagar, AWTC, Dharmanagar, North Tripura
12.	Sri Ram Krishna Bhattacharjee	Supervisor (ICDS)	Kadamtala ICDS Project, Dharmanagar, North Tripura.

This issue as per the approval of the authority conveyed vide memo No. F.1(47)-GA(CAB)..(not legible) dated 17.05.2017 under Rule20(2) of the Rules of Executive Business in reference to the proposal of the Department vide Memo No. (not legible)

Director
 Social Welfare & Social Education

Tripura.”

Government of Tripura
Directorate of Social Welfare & Social Education
Ujan Abhoynagar, Agartala
Pin-799005

No.F.3(51)-DSWE/ESTT/2014(L)/2279(9) Dated, Agartala 02.06.2017

MEMORANDUM

Subject: Regularization of Ad-hoc appointed Social Education Organizer (M) under the Department of Social Welfare & Social Education, Govt. of Tripura.

The ad-hoc appointment of the following 2 Nos. Social Education Organizer who were appointed during the year 1991-92 on ad-hoc basis are hereby regularized in their services w.e.f. the date of their appointment (year 1991-92), so that they can get the consequential benefits of seniority and pensions.

Sl. No.	Name of the staff	Designation	Present place of posting
1.	Sri Pradip Bhattacharjee	Social Education Organizer (M)	Directorate of Social Welfare & Social Education, Agartala
2.	Sri Sanjoy Saha	Social Education Organizer (M)	Bishalgarh ICDS Project, Sepahijala Tripura

This issue as per the approval of the authority conveyed vide memo No. F.1(47)-GA(CAB)2000/ (vol-II) dated 17.05.2017 under Rule20(2) of the Rules of Executive Business in reference to the proposal of the Department vide Memo No. (not legible)

Director
Social Welfare & Social Education
Tripura.”

Government of Tripura
Directorate of Social Welfare & Social Education
Ujan Abhoynagar, Agartala
Pin-799005

No. No.F.3(51)-DSWE/ESTT/2014(L)/2282(10) Dated, Agartala
02.06.2017

MEMORANDUM

Subject: Regularization of Ad-hoc appointed Supervisor (RFLP) under the Department of Social Welfare & Social Education, Govt. of Tripura.

The ad-hoc appointment of the following 3 Nos. Supervisors (RFLP) who were appointed during the year 1991-92 on ad-hoc basis are hereby regularized in their services w.e.f. the date of their appointment (year 1991-92), so that they can get the consequential benefit of seniority and pensions.

Sl. No.	Name of Staff	Designation	Present place of posting
1.	Sri Krishna Chakraborty	Supervisor (RFLP)	Urban ICDS Project, West Tripura
2.	Sri Bholaram Biswas	Supervisor (RFLP)	Dharmanagar N. P. ICDS, Project, North Tripura
3.	Sri Nripendra Nath	Supervisor (RFLP)	Panisagar ICDS Project, North Tripura

This issue as per the approval of the authority conveyed vide memo No. F.1(47)-GA(CAB)2000/ (not legible) dated 17.05.2017 under Rule20(2) of the Rules of Executive Business in reference to the proposal of the Department vide Memo No. (not legible)

Director
Social Welfare & Social Education
Tripura.”

[26] However, all the candidates under the said memorandums fall under the Social Welfare Department and writ petitioners herein, are presently working in the Social Welfare Department and are aggrieved by the said seniority. It is also seen from the record that there are separate rules governing the appointment of the ICDS and RFLP and other categories' employees. In view of the same, it can be construed that Article-14 do not protect the case of the petitioners and there is no discrimination as everyone is under their own class and the appointments and seniority accordingly made by following the TPSC Rules and other rules governing ICDS & RFLP.

[27] At the time when the appellant was appointed in the post of Supervisor (Rural Functional Literacy Project), the said post was under a Centrally sponsored Scheme which was subsequently discontinued by the Government of India, Ministry of Human Resource Development, Department of Education during the period from 1991-1992 and thereafter the same was transferred to the State Plan under State Audit Education Programme w.e.f. 1st April, 1992. Henceforth the post of Supervisor (RFLP) was treated as State Plan post from the financial year 1992-1993 onwards. At the time when the Appellant was appointed, the recruitment for the post of Supervisor (RFLP) was governed by the Recruitment Rules dated 13.10.1980 and under the said Recruitment Rules there was no requirement of selection to the post of Supervisor (RFLP) through Public Service Commission. Accordingly at the time of appointment of the appellant, there was no requirement of recruitment through selection process of the Tripura Public Service Commission as there was no requirement of the same as per the Recruitment Rules. Thus, there is no proportional relation with regularization of supervisor.

[28] As per the service jurisprudence, a challenge to fixation of seniority by way of appointments is concerned, it ought to have maintained only by holders of the same post i.e., Supervisor, RFLP. But, in the batch of writ petitions bearing WP(C) No. 1497 of 2017 and others, the writ petitioners holding the post of Supervisor, ICDS had challenged the seniority of the appellant holding the post of Supervisor, RFLP and as such the challenging of the seniority under the above premise is not tenable, there is discrimination and no violation of Article-14 of the Constitution of India.

[29] Learned counsel for the respondent was silent when the Court enquired into the matter regarding obtaining of the minutes of the Council of Ministers. Insofar as the challenging of the minutes of the cabinet decision is concerned, the writ petitions stand dismissed for the reasons stated (*supra*) as one of the reason is the decision of the Council of Ministers is not amenable under writ jurisdiction as the same is premature and unless it is proved violations of Constitution of India and Public Interest. The decision cited by the counsel in this regard is not applicable to the facts and circumstances of the case. The petitioners henceforth forbid from obtaining such documents contrary to procedure and the Government is expected to keep a proper surveillance. Accordingly, the writ petitions are liable to be dismissed consequently, the appeals deserves to be allowed.

[30] In the light of the above discussion, the appeals stand allowed and writ petitions stands dismissed. Consequently, the order passed by the learned Single Judge stands set aside. As a sequel, miscellaneous application, pending if any, shall stands closed.

B. PALIT, J

T. AMARNATH GOUD, J

A.Ghash

ANJAN
GHOSH

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