

**HIGH COURT OF TRIPURA
AGARTALA
WA NO.180 OF 2022**

Sri Basanta Sen,

Son of Late Priyanbandhu Sen,
Resident of village-Ramnagar Road No.8,
Nivedita Palli, P.O.- Agartala, P.S.- West Agartala,
Sub-Division-Agartala, District-West Tripura, Pin-799002.

.....**Petitioner-Appellant(s)**

Versus

1. State of Tripura,

Represented by the Secretary & Commission to the Department of Finance, Government of Tripura, Having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O. Kunjaban, P.S.- New Capital Complex, Sub Division-Sadar, District-West Tripura.

2. The Secretary & Commissioner,

Department of Finance, Government of Tripura, Having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O- Kunjaban, P.S.- New Capital Complex, Sub-Division-Sadar, District-West Tripura.

3. The Secretary & Commissioner,

Panchayet Department, Government of Tripura, having its office at New Secretariat Complex, Gurkhabasti Agartala, P.O.- Kunjaban, P.S.- New Capital Complex, Sub-Division Sadar, District-West Tripura.

.....**Respondent(s)**

For the Appellant(s) : Mr. Somik Deb, Sr. Advocate.
Ms. A. Chakraborty, Advocate.

For the Respondent(s) : Mr. D. Sharma, Addl. G.A.

Date of hearing : 26.02.2024.

Date of delivery of
Judgment & Order : 06/03/2024

Whether fit for reporting : YES.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R**

(T. AMARNATH GOUD,J)

This present Writ Appeal has been filed, under Rule 2 of Chapter V-A of the Gauhati High Court Rules, read with Article 226 of the Constitution of India, against the impugned Order dated 01.08.2022, passed in W.P.(C) No. 634 of 2021, whereby the Hon'ble Single Judge has dismissed the writ petition.

2. The brief fact of the case is that, the petitioner-appellant was issued with an Offer of Appointment for the post of the Panchayat Extension Officer, Panchayat Department, Government of Tripura, vide letter of appointment bearing reference No.F(1-2)-Esstt/PR/79(Vol-II)/8315-28 dated 14.09.1989 on an AD-HOC basis. After completion of uninterrupted and satisfactory service for 28 years on AD-HOC basis, the petitioner-appellant on attaining the age of superannuation proceeded on retirement on 31.08.2017. Thereafter, the petitioner-appellant *inter alia* prayed for his regularization, along with pensionary benefits and pensions. The petitioner-appellant also submitted several representations before the appropriate authority, but the same did not fetch any fruitful results. Thereafter, the petitioner-appellant instituted a writ petition, marked as WP(C) No.602 of 2019, before this Hon'ble High Court, and by a Judgment & Order dated 11.07.2019. The same was allowed in favour of the petitioner-appellant, yet no

implementation was carried out by the respondents. On 14.08.2020, the respondent authority passed an impugned Order against in consideration for the regularization of service of the petitioner-appellant. Aggrieved thereby, a writ petition, marked as WP(C) No.634 of 2021, was filed by the petitioner-appellant. Hon'ble Single Bench of this Court vide Order dated 01.08.2022 dismissing the said writ petition.

3. Being aggrieved by and dissatisfied with the impugned Judgment and Order dated 01.08.2022, this present writ appeal seeking the following reliefs has been filed:-

"i) Admit this Writ Appeal;

ii) Call for the relevant records, pertaining to the impugned Order dated 01.08.2022 (Annexure-4 supra), passed in WP(C) No. 634 of 2021;

iii) After hearing the parties, in terms of the GROUNDS set forth above, be pleased to quash/set aside the impugned Order dated 01.08.2022 (Annexure-4 supra), passed in WP(C) No. 634 of 2021, and thereafter, allow this Writ Appeal, thereby directing the respondents to forthwith accord the benefit of regularization in service, from the date of his initial appointment, and thereupon, grant Pension alongwith arrears thereof, Gratuity, Death-cum-Retirement Gratuity, Provident Fund, leave encashment and all other pensioner benefits, etc. alongwith Penal Interest thereof, in favour of the appellant;

iv) And pass any other Order(s) as may be deemed fit and proper for ends of justice.

4. Heard Mr. Somik Deb, learned Sr. counsel assisted by Ms. A. Chakraborty, learned counsel appearing for the petitioner-appellant as well as Mr. D. Sharma, learned Addl. G.A. appearing for the respondents.

5. Mr. Somik Deb, learned Sr. counsel appearing for the petitioner-appellant submits that because of the long pending service of 28 years, his client is entitled to regularisation.

To support his argument, learned Sr. counsel referred to **Para-15** of the Hon'ble Constitutional Bench Judgment of the Hon'ble Supreme Court reported in **(2000) 8 SCC 25** titled as **Rudra Kumar Sain and ors., Vs. Union of India and ors.** The same is produced here-in-under:-

"15. So far as the terminology used in Singlas case, namely *ad hoc*, *fortuitous* and *stop-gap*, the same is quite familiar in the Service Jurisprudence. Mr. Rao, appearing for the High Court of Delhi, however contended before us that the said terminology should be given the same meaning, as was given in [Parshotam Lal Dhingra vs. Union of India](#), In Dhingras case, the Court was examining whether removal of an employee can be held to be a penal and whether [Article 311\(2\)](#) of the Constitution can at all be attracted and the Court also observed that certain amount of confusion arises because of the indiscriminate use of the words *provisional*, *officiating* and *on probation*. We do not think that the concept or meaning given to those terminology in Dhingras case will have any application to the case in hand, where the Court is trying to work- out an equitable remedy in a manner which will not disentitle an appointee, the benefit of his fairly long period of Service for the purpose of seniority, even though he possesses the requisite qualification and even though his appointment has been made after due consultation and/or approval of the High Court.

16. The three terms *ad hoc*, *stop gap* and *fortuitous* are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression *fortuitous* in Strouds Judicial Dictionary is *accident or fortuitous casualty*. This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to *fortuitous*. In Blacks Law dictionary, the expression *fortuitous* means *occurring by chance*, a *fortuitous* event may be highly unfortunate. It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression *ad hoc* in Blacks Law Dictionary, means something which is formed for a particular purpose. The expression *stop-gap* as per Oxford Dictionary, means a temporary way of dealing with a problem or satisfying a need.

17. In Oxford Dictionary, the word *ad hoc* means for a particular purpose; specially. In the same Dictionary, the word *fortuitous* means happening by accident or chance rather than design.

18. In *P. Ramanatha Aiyers Law Lexicon* (2nd Edition) the word *ad hoc* is described as for particular purpose, Made, established, acting or concerned with a particular and or purpose. The meaning of word *fortuitous* event is given as an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God.

19. The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as *ad hoc* or stop-gap. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as *fortuitous* in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a stop-gap arrangement and appointment in the post as *ad hoc* appointment. It is not possible to lay down any straight-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (*ad hoc*, *fortuitous* or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre.

20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be stop-gap or fortuitous or purely *ad hoc*. In this view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be fortuitous/*ad hoc*/stop-gap are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

Learned Sr. counsel further submits that this Court on 09th February 2024 in WP(C) No.609 of 2023 dealt with a similar kind of issue and allowed the writ petition. Learned Sr. counsel

relied upon Para-26 of the said Judgment and the same is produced here-in-under:-

"[26] For the laches of the respondents in not acted upon to regularize the petitioner and allowing him to retire from services, when the petitioner raised his voice for pensionary benefits, respondents declined the request of the petitioner on the ground that his services were not regularized and have no weightage, as the petitioner is not at fault but it is the inaction of the respondents for sleeping over the matter all through. Recently, Hon'ble Supreme Court in case No. Special Leave to Appeal (C) No.1109/2022 (The State of Gujarat & others v. Talsibhai Dhanjibhai Patel) affirming the order of the Hon'ble High Court of Gujarat has held that after rendering service for 30 years, an employee cannot be deprived of his pension. For the purpose of reference, the said order of the Hon'ble Apex Court is quoted hereinunder:-

O R D E R

It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand. In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years service. Hence, the Special Leave Petition stands dismissed. Pending application(s), if any, shall stand disposed of."

Stating thus, learned Sr. counsel urged this Court to allow this writ appeal.

6. On the other hand, Mr. D. Sharma, learned Addl. G.A. appearing for the State-respondent referred to the appointment letter issued to the petitioner-appellant dated 14th September, 1989 wherein it is stated that the appointment to the post of Panchayet Extension Officer under this Department is made purely on temporary and AD-HOC basis subject to confirmation by the Tripura Public Service Commission on appearance of the concerned incumbents to the Tripura Public Service Commission (for

short 'TPSC') for necessary examination on call. From the very first day, it has been made clear that the petitioner-appellant has to appear before TPSC for examination but the petitioner-appellant has not appeared. The petitioner-appellant got the opportunity to appear for examination before the TPSC but he did not appear. It is the fault of the petitioner-appellant that he has not been given the benefit of regularization, it is not the fault on the part of the State or TPSC. Now after retirement, he cannot claim such benefit of regularization.

7. In reply to the submission of the learned Addl. G.A., Mr. Deb, learned Sr. counsel referred to a letter dated 19.06.1992 wherein the Government has taken a decision to regularise the services of the petitioner-appellant and 2(two) others with the approval of the Tripura Public Service Commission but the Government did not take approval from the Commission. Thereafter the petitioner-appellant was allowed to continue and after the retirement of the petitioner-appellant, the respondent cannot say that the petitioner-appellant has not gone to the Commission. Learned Sr. counsel also stated that the petitioner-appellant cannot go to the Commission on his own. A conscious decision is there is Communication dated 19.06.1992 wherein it is stated that '*kindly communicate the approval of the Commission in regard to the regularisation of their ad-hoc appointment as Panchayet Extension Officer w.e.f. the respective date of their joining to the post.*' But

the Government did not take any action in furtherance to this communication and now the blame is being put on the petitioner-appellant.

8. Heard both sides and perused the evidence on record.

9. It is seen from the record that way back in the year 1992, the Government has recommended the name of the petitioner-appellant and 2(two) others. Said letter of communication is produced here-in-under:-

*"No.F.1(1-2)-Estt/98/79/ Vol-ii)/ 3325-26
Government of Tripura
Directorate of Panchayat
Dated, Agartala, the 19th June, 1992.*

*To
The Deputy Secretary
Tripura Public Service Commission, Agartala*

Subject : Temporary appointment of 3 (three) Panchayat Extension Officer on ad-hoc basis-regularization of appointment thereof.

Sir,

Kindly refer to this Directorate letter No.F.1(1-2)-Estt/PR/79(Vol.III) /2406-08, dated 31.5.1990 on the above subject.

I would inform you that in pursuance of the decision and approval of the Government, 3 (three) seats (Un-reserved) of Panchayat Extension Officers available as vacant in the Deptt. Against direct recruitment were filled a by appointing following 3 (three) persons temporarily on ad-hoc basis w.e.f. the date maintained against each of them.

- | | |
|-----------------------------------|--------------------------|
| <i>1. Sri Debashish Datta Roy</i> | <i>-15.9.1989(FN)</i> |
| <i>2. Sri R Basanta Sen.-</i> | <i>-15.9.1989(FN)</i> |
| <i>3. Sri Asish Dutta</i> | <i>- 27.9.1989 (FN)</i> |

The appointment on ad-hoc basis was made in the interest of Public Service and in administrative exigencies. It has been decided by the Government that the ad-hoc appointment of above 3(above) Panchayat Extension Officers should be regularized with the approval of the commission.

The detailed particulars in respect of above 3 (three) persons are furnished in the Annexure which may kindly be perused.

I would , therefore, request you to kindly communicate the approval of the commission in regard to the regularization of their ad-hoc appointment as Panchayat Extension Officer w.e.f. the respective date of their joining to the post.

An early action is requested.
Enclo: As stated
1(one) sheet

Yours faithfully
Sd/-
(S.N. Chakraborty)
Director of Panchayat
Government of Tripura"

10. As evident from the above-mentioned letter, way back in the year 1992, the Government has recommended for regularisation of the petitioner-appellant with the approval of the Tripura Public Service Commission. This Court is of the opinion that since the matter is pending, the petitioner-appellant is not at fault. The petitioner has rendered 28 years of service and he is entitled for the benefits. In respect of said argument, this present writ petition is allowed in favour of the petitioner-appellant.

11. The Hon'ble Single Judge in the impugned Judgment dismissed the writ petition on the ground that the petitioner-appellant did not claim for any regularisation of service during the tenure of his service period. But it is seen from the record that with a prayer to review his appointment in the post of Panchayet Extension Officer issued in AD-HOC basis, the petitioner-appellant submitted several representations since 2017 and much before which is the subject matter of WP(C) No.602 of 2019 which is the continuation of this writ appeal.

12. On the point of laches, this Court is of the opinion that for the laches of the respondents in not acted upon to regularise the petitioner and allowing him to retire from service, when the petitioner-appellant raised his voice for pensionary benefits, respondents declining the request of the petitioner-appellant on the ground that his services were not regularised have no weightage as the petitioner-appellant is not at fault, but, it is the inaction of the respondents for sleeping over the matter all through. On the above-mentioned point, this Court may refer to Hon'ble Supreme Court Judgment passed the ***State of Gujarat & others v. Talsibhai Dhanjibhai Patel(supra)***.

The relevant portion of the said Judgment is again reproduced here-in-under for convenience:-

"O R D E R

It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand. In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years service. Hence, the Special Leave Petition stands dismissed. Pending application(s), if any, shall stand disposed of."

Earlier, WP(C) No.609 of 2023 was filed by one Mr. Debashish Datta Roy who is shown at serial No.1 in communication dated 19.06.1992 and this petitioner at serial No.2. This Court disposed the said WP(C) No.609 of 2023 by order dated 09.02.2024 and Judicial discipline requires to maintain parity. Accordingly this petitioner is also entitled to relief.

13. In view of the above discussion and observation, this Court is of the opinion, that the petitioner-appellant herein is entitled to the benefits as claimed by him in his writ appeal. Accordingly, this present writ appeal stands allowed and the impugned Judgment and Order dated 01.08.2022 passed by the Hon'ble Single Judge in WP(C) No.634 of 2021 is set aside.

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

B. PALIT, J

T. AMARNATH GOUD, J



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