

**HIGH COURT OF TRIPURA
AGARTALA**

WA No. 128 of 2023

Shri Jay Choudhury,
S/O Late Sunil Chandra Choudhury,
Aged about 51 years, resident of Sunil villa,
Bhati Abhoynagar (West), near Ration Shop No.9,
P.O. Agartala-799001, Sub-Division – Agartala,
P.S. West Agartala, District- West Tripura.

..... Appellant(s)

V E R S U S

1. The State of Tripura,
Represented by the Secretary,
Department of Forest, Government of Tripura,
Civil Secretariat, P.O. Kunjaban-799010,
Sub Division – Agartala, P.S. New Capital Complex,
District – West Tripura.
2. The Secretary, Department of Forest,
Government of Tripura, Civil Secretariat,
P.O. Kunjaban-799010, Sub Division- Agartala,
P.S. New Capital Complex, District- West Tripura.
3. The Principal Chief Conservator of Forest,
Government of Tripura, having its office at ‘Aranya Bhavan’,
Pandit Nehru Complex, Gorkhabasti,
P.O. Kunjaban-799010, P.S. New Capital Complex,
District-West Tripura.
4. The Divisional Forest Officer,
Working Plan Division No.II, Agartala,
West Tripura

..... Respondent(s)

For Appellant(s)	:	Mr. S Lodh, Advocate.
For Respondent(s)	:	Mr. D C Saha, Advocate.

WA No. 150 of 2023

1. The State of Tripura,
Represented by the Secretary,
Department of Forest, Government of Tripura,
Civil Secretariat, P.O. Secretariat,
P.S. New Capital Complex, District-West Tripura,
Pin-799010
2. The Secretary, Department of Forest,
Government of Tripura, Civil Secretariat,
P.O. Secretariat, P.S. New Capital Complex,
District-West Tripura, Pin-799010
3. The Principal Chief Conservator of Forest,
Government of Tripura, having its office at ‘Aranya Bhavan’,
Pandit Nehru Complex, Gorkhabasti,
P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura, Pin-799010

4. The Divisional Forest Officer,
working Plan Division No.II, Agartala,
District-West Tripura

..... Appellant(s)

V E R S U S

Shri Jay Choudhury,
S/O Late Sunil Chandra Choudhury,
resident of Sunil villa, Bhati Abhoynagar (West),
near Ration Shop No.9, P.O. Agartala, Sub-Division – Agartala,
P.S. West Agartala, District- West Tripura, Pin-799001

..... Respondent(s)

For Appellant(s)	:	Mr. D C Saha, Advocate.
For Respondent(s)	:	Mr. S Lodh , Advocate.

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

JUDGMENT & ORDER (ORAL)

19/02/2024

Heard learned counsel for writ petitioner/appellant in WA No.128/2023 and learned counsel for State/appellant in WA No.150/2023. Both the writ petitioner and the State are aggrieved by part of the order and judgment dated 06.07.2023 passed in WP(C) No.426 of 2022 by the learned writ court, as they consider adverse to them.

2. The writ petitioner was a Daily Rated Worker who was regularized in terms of the Office Memorandum dated 31st January, 2009 upon completion of ten years of service since 1999 in Group-D vide order dated 30th July, 2014 issued by the Principal Chief Conservator of Forests, Tripura. He approached the writ court for regularization of his service as a Group-C employee as according to him, he fulfilled the eligibility conditions prescribed in Office Memorandum No. F.10(2)-FIN(G)/2008(Part) dated 21.01.2009 being a graduate.

3. Learned counsel for the petitioner has drawn the attention of this court to the letter No.1576-77 dated 10th November, 2008 issued by the Office

of the Divisional Forest Officer, Working Plan Division No.II, Agartala containing the tabular list of the DRWs/Casual/Part-time workers which shows that he was having the educational qualification of B.Sc.(Bio) pass, at the time of his engagement on 3rd April, 1999. The petitioner also claims to possess the technical qualification of DOEACC 'O' LEVEL examination, i.e. a Diploma in Computer Application, for being regularized in a Group-C post. He also contended that since inception he has been made to discharge responsibilities on a Group-C post. He has referred to the office order dated 28th April, 2020 issued by the Office of the Deputy Conservator of Forests Working Plan Division No.1, Gandhigram, West Tripura where his name occurs at serial No.6. He has been entrusted to function as the In-charge Working Plan Section in addition to the charge of Store Section from one Sri Dhrubajit Debbarma, UDC and also to maintain all files/register/records etc. relating to Store Section. Petitioner also complained that his name is not reflected in the seniority list of Group-D employees even after his regularization in 2014.

4. Learned writ court after noticing the relevant facts of the case and the documents placed from record was pleased to hold as under:

“6. From the aforesaid submissions and statements, it is revealed that sometimes the service of the petitioner has been utilized as Group-C employee. The petitioner has categorically stated in his writ petition that since his joining he has been discharging his duties and responsibilities as Group-C employee under the respondents. There is no denial on behalf of respondents that the service of the petitioner has been utilized as Group-C employee in terms of the office order dated 28.04.2020.

7. Considering all aspects, I direct the respondents to consider granting of minimum pay in the scale of pay applicable to Group-C employees, if his service is being utilized as Group-C employee permanently subject to the condition that his appointment as Group-D employee was made following the established norms of public employment as provided in Indian Constitution.

In the light of the above, the instant writ petition stands disposed.”

5. The fight between the two appellants is on the following issue: Petitioner seeks to be regularized on Group-C post having been made to discharge responsibilities of Group-C post since long and having fulfilled the educational as well as technical eligibility criteria, as aforesaid. Appellant-State is aggrieved by the direction to pay at minimum scale of pay as applicable to Group-C employee to the petitioner as the writ court held that there was no denial of the respondents that his services has been utilized as an Group-C employee in terms of office order dated 28th April, 2020 but with a rider that his appointment as Group-D employee should have been made following established norms of public employment.

6. It has been brought to our notice by the appellant-State that by Notification dated 28th April, 2010 (Annexure-R-10), which is the Tripura State Civil Services (Revised Pay) (Third Amendment Rules), 2009, in Rule 2 it has been stipulated that those Data Entry Operators or Computer Operators or Computer Assistants working in different departments on fixed pay or consolidated pay or as DRW shall be classified into categories as enumerated thereunder. Rule 2 further provides that those who are having degree in Computer Application or Graduate with one year Diploma or at least 'O' Level Certificate in Computer Application from a recognized institution and working on fixed pay or consolidated remuneration or as DRW at the time of publication of TSCS (RP) Rules, 2009 shall be re-designated as fixed pay Senior Computer Assistant.

7. Learned counsel for the State has referred to the additional affidavit filed by them in the writ petition before the case was disposed of specifically Annexure-R-8 dated 27th December, 2022 which is a

communication by the Controller of Examinations-II of the National Institute of Electronics & Information Technology to the Deputy Conservator of Forests, Government of Tripura, Agartala on the subject of verification of technical educational qualification of the petitioner. It is pointed out that on verification of the educational qualification of the petitioner bearing registration No.300251 for 'O' Level it has been found that the petitioner had cleared the three theory modules only. His registration validity has been over in the year 2006. Jay Chaudhuri is not qualified as NIELIT erstwhile DOEACC 'O' Level course.

8. Learned counsel for the State submits that the entire plea of the petitioner for regularization as a Group C employee would not stand on merits as he does not fulfill the technical eligibility criteria as per the TSCS (RP) Third Amendment Rules, 2009 dated 28th April, 2010. It is further submitted that the petitioner would not be entitled to the scale of Group-C employee being not regularized on a group-C post. Learned counsel for the state has, however, not disputed that the petitioner has been made to discharge responsibilities of a Group-C employee by Office Order dated 28.04.2020.

9. Learned counsel for the writ petitioner-appellant has on the other hand submitted that as per 2009 regularization scheme, petitioner ought to have been regularized as a Group-C employee in place of Group-D. Since he has been discharging the responsibilities of Group-C post, therefore, he ought to be paid the minimum pay scale of Group-C employee as directed by the Writ Court. However, learned counsel for the writ petitioner has not been able to overcome that the Third Amendment Rules, 2009 do provide for certification of 'O' Level in DOEACC which he did not fulfill.

10. We have considered the submission of the learned counsel for the parties and taken note of the relevant materials on record. This court cannot be oblivious of the fact that the writ petitioner was regularized as a Group-D employee on 03.04.2014. He approached the writ court in the year 2022 with a grievance relating to regularization in Group-C post. Meanwhile, the notification dated 21.01.2009 containing the regularization scheme has been abolished by the in the year 2018 by the State Government. The Tripura State Civil Services (Revised Pay) Third Amendment Rules, 2009 prescribes a qualification of 'O' Level Certificate in Computer Application which upon verification from the National Institute of Electronics and Information Technology (NIELIT) by the Department has revealed that the petitioner does not qualify in the DOEACC 'O' Level Course. As such, one of the essential technical educational criteria is not being fulfilled by the petitioner to be considered for regularization on Group-C post assumingly delay in approaching the court may be ignored for the time being. Therefore, no direction for regularization of the petitioner in Group-C post can be made.

11. So far as the direction to pay minimum scale of pay applicable to Group-C employee is concerned, we are of the considered view that if the petitioner, on being regularized as a Group-D employee, has been made to discharge the duties of a Group-C post by office order such as order dated 28.04.2020 the respondent department is obliged to pay the officiating allowance for discharging higher responsibilities of a Group-C post by the petitioner in addition to his duties as a Group-D employee. However, since the petitioner is not regularized in a Group-C post he will not be entitled to the full pay of a Group-C employee, otherwise it would be contrary to the Tripura State Civil Services (Revised Pay) Rules.

12. With these observations, the appeals are disposed of. Pending applications, if any, also stand disposed.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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