

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.160 of 2023

The State of Tripura & others

.....Appellant(s);

Versus

Sri Sanjay Kanti Chanda @ Sanjay Chanda & others

.....Respondent(s).

For Appellant(s) : Mr. M. Debbarma, Addl. G.A.

For Respondent(s) : None.

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

Order

19/03/2024

Heard Mr. M. Debbarma, learned Additional Government Advocate for the appellants-State. Respondents have been served notice but they have not entered appearance to contest the appeal.

2. The appellants-State are aggrieved by the impugned order dated 03.07.2023 passed in WP(C) No.1109/2022 directing the respondents to consider the regularization of service of the petitioners as Group 'D' employees within a period of 3(three) months from the date of the order subject to availability of vacancy in the regular sanctioned posts. Respondents have also been directed to consider grant of pay scale at minimum pay of the basic scale of pay at the lowest level prescribed for such post in accordance with law.

3. The petitioners/appellants herein claim to be discharging duties as Permanent Labourers in Animal Resources Development Department for different periods. The relevant service details of the petitioners have been indicated at Para 4 of the impugned order which is extracted hereunder:

“4. That, in reply to para 1 to 2.5 of the writ petition, I say that the statements made by the writ petitioners are not true at all because of the fact that the promotion has been made who completed 15 years of service as DRW/Casual Workers including minimum length of service as PL for seven years to the post of Livestock Farm Workers as on 30.10.2015 but the petitioners have not completed 15 years of service as DRW/ Permanent Labourer at the time of promotion.

Service details of the petitioners are described hereinbelow:

Sl.No.	Name of the Petitioners	Date of engagement under ARDD a DRW/Casual Worker	Date of joining as a PL under ARDD	Service period in the time of date of engagement to 12/08/2014
1	Sri Sanjoy Kanti Chanda	13/08/2002	01/01/2007	11 years 11 months
2	Smt. Bhanubati Reang	26/08/2002	01/01/2007	11 years 11 months 18 days
3	Sri Nilkumar Chakma	02/10/2003	01/01/2007	10 years 10 months 12 days
4	Sri Makhan Nath	04/12/2002	01/01/2007	11 years 8 months 11 days
5	Sri Raju Kanti Barua	26/08/2002	01/01/2007	11 years 11 months 18 days

Since the petitioners have not completed 15 years of service including minimum length of service as PL for seven years and therefore, they do not come under the purview of the memo issued by the Finance Department, Govt. of Tripura vide No. F.10(2)-FIN(G)/2008, dated 12.08.2014 which provides for reduction of minimum length of service required for regularization of Permanent Labourer in the post of Farm Worker.”

Learned Single Judge took note of the submission of the learned Additional Government Advocate that the memorandum dated 12.08.2014 for regularization of Permanent Labourers in the post of Farm Worker has been repealed vide memorandum dated 13.11.2019. However, it was observed that the memorandum dated 12.08.2014 of the Finance Department, Government of Tripura reduced the number of years for appointment as a Permanent Labourer for being regularized on the post of Farm Worker from 10(ten) years to 7(seven) years. Learned Single Judge, therefore, directed the services of the petitioners to be counted till 13.11.2019 by which the earlier memorandum dated 12.08.2014 had been repealed as these petitioners would have successfully completed their continuous 15 years of service including the minimum length of 7(seven) years as Permanent Labourers by then. Learned Writ Court was of the view that these petitioners had acquired the requisite

number of years of 15 years of service including minimum length of 7(seven) years as Permanent Labourers till 13.11.2019 for being regularized in terms of memorandum dated 12.08.2014 and as such proceeded to issue the impugned directions.

4. Mr. M. Debbarma, learned Additional Government Advocate for the appellants-State, has taken a plea that the minimum length of service as Permanent Labourers could not be counted till 13.11.2019 since all schemes for regularization have been repealed by the office memorandum dated 31.07.2018. The memorandum dated 13.11.2019 is only a clarification of the aforesaid position as there were certain shortcomings in the instructions for regularization of services of Permanent Labourer. In any case, the office memorandum dated 12.08.2014 was an instruction and not a regularization scheme. The instruction was to the effect that the minimum number of years as Permanent Labourer for the purposes of regularization is reduced from 10(ten) years to 7(seven) years. In that light, the departments were directed to approach the Council of Ministers with comprehensive proposals for regularization of such Permanent Labourers who had served minimum period of 15 years including the service period as Casual Workers or Daily Rated Workers of which at least 7(seven) years length should be as Permanent Labourer. It is submitted that the scheme for regularization was framed on 21.01.2009 and other such regularization schemes for different category of workers which stood repealed by memorandum dated 31.07.2018. In the absence of regularization scheme, the impugned direction to consider the length of service of the petitioners till 13.11.2019 is not proper. The length of service of these writ petitioners could

have at best been considered till 12.08.2014 for making such a proposal and at best such proposal could have been made under an existing scheme. Since scheme of regularization has been repealed by virtue of memorandum dated 31.07.2018, the directions of the learned Writ Court would amount to creation of a new scheme by the Court which is within the domain of the executive. As such, the impugned directions may be interfered.

5. We have considered the submission of learned Additional Government Advocate for the appellants-State, gone through the relevant records, the memorandum dated 12.08.2014 [Annexure-R/1], memorandum dated 13.11.2019 [Annexure-R/2] and also the memorandum dated 31.07.2018 issued by the Finance Department, Government of Tripura by which regularization schemes have been repealed.

We find that the memorandum dated 12.08.2014 was not a scheme for regularization but a clarification as to the minimum number of years required to be counted for the purposes of regularization under the existing scheme in the government. The period of services for engagement as Permanent Labourer was reduced from 10(ten) years to 7(seven) years by the memorandum dated 12.08.2014. All regularization schemes stood repealed by memorandum dated 31.07.2018. The memorandum dated 13.11.2019 only clarifies that the memorandum dated 12.08.2014 also stood repealed. Therefore, in the absence of a regularization scheme, petitioners/appellants herein could not take the benefit of the memorandum dated 12.08.2014 or the memorandum dated 13.11.2019 for seeking regularization by counting their services up to

13.11.2019. As such, we are unable to uphold the decision of the learned Writ Court.

6. The appeal is allowed. The impugned order dated 03.07.2023 passed in WP(C) No.1109/2022 is set aside.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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