

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.940 of 2022

Jayanti Bhattacharjee,

Wife of Sri Suman Bhattacharjee, resident of Village-Joynagar,
Lane-4, PO-Agartala, PS-West Agartala, Sub-division-Agartala,
District-West Tripura, PIN-799001, aged about 40 years.

....Petitioner(s)

Versus

- 1. The Tripura University**, represented by its Registrar, Tripura University, Suryamaninagar, Agartala, District-West Tripura, PIN-799022.
- 2. The Vice-Chancellor**, Tripura University, Suryamaninagar, Agartala, District-West Tripura, PIN-799022.
- 3. The Registrar**, Tripura University, Suryamaninagar, Agartala, District-West Tripura, PIN-799022.

....Respondent(s)

For the Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate Mrs. R. Chakraborty, Advocate
For the Respondent(s)	:	Mr. T. Debbarma, Advocate
Date of hearing and delivery of Judgment & Order	:	09/01/2024
Whether fit for reporting	:	YES

HON'BLE MR JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

By means of filing the present writ petition, the petitioner has prayed for regularization with regular scales of pay under the respondents. The petitioner has further prayed for revoking/rescinding the impugned order dated 30.09.2022(Annexure-17 to the writ petition) wherein it was notified that the wages of the petitioner would be regulated @ Rs.1200/- per day for office working days w.e.f. 03.01.2022.

2. Facts:

The seminal facts relevant to decide the controversy raised in this writ petition may be reproduced hereunder:

2.1. Pursuant to an advertisement dated 04.06.2008, issued by Registrar, Tripura University(Central), the petitioner, through a regular selection process was selected and accordingly appointed as Lecturer under BBA programme on contractual basis in the School of Management, Tripura University under memorandum dated 20.01.2009(Annexure-2 to the writ petition). The contractual period of the service of the petitioner was extended time to time. During such renewal of the contractual period, the post held by the petitioner was re-designated as Assistant Placement Officer(Contractual) vide memorandum dated 02.02.2016(Annexure-5 to the writ petition). The last extension of the service of the petitioner as Assistant Placement Officer(Contractual) was extended under memorandum dated 28.12.2020 issued by the Registrar(I/c), Tripura University for a period of one year w.e.f. 02.01.2021 to 01.01.2022 with one day break on 01.01.2021(Annexure-15 to the writ petition) and it came to an end w.e.f. 02.01.2022. Thereafter, no extension was made. The petitioner submitted representations to consider the extension of her contractual service as she was facing serious financial crisis.

2.2. It is the case of the petitioner that she was performing her duties under the respondents-Tripura University even after the expiry of the contractual period and for that reason, she claimed monthly salaries with arrears of pay. On consideration of repeated representations submitted by the petitioner, the respondents-Tripura University had issued a fresh office order dated 30.09.2022 notifying her engagement as daily wage basis and it was stipulated that the wages of the petitioner as Assistant Placement Officer(Contractual), Tripura University would be regulated @Rs.1200/- per day for office working days w.e.f. 03.01.2022 and the total wages payable for her working days w.e.f. 03.01.2022 to 20.08.2022 is Rs.1,82,400/- only.

2.3. Feeling shocked, the petitioner submitted a representation to the Vice-Chancellor, Tripura University on 17.10.2022 *inter alia* urging to recall the order dated 30.09.2022 and further praying for issuance of a formal order of regularization of her service. Having found no response, the petitioner has challenged the action of the respondents-Tripura University by presenting the instant writ petition before this Court.

3. On the aforesaid background facts, I have heard Mr. Somik Deb, learned senior counsel assisted by Mrs. R. Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. T. Debbarma, learned counsel appearing for the respondents-Tripura University.

4. Submissions on behalf of the petitioner:

4.1. Mr. Deb, learned senior counsel for the petitioner has submitted that the action of the respondents-Tripura University is pre-judicial to the interest of the petitioner and the office order regulating her service on daily basis @ Rs.1200/- per working day is unwarranted and arbitrary and therefore, the said order dated 30.09.2022(Annexure-17 to the writ petition) is liable to be quashed. Mr. Deb, learned senior counsel has strongly contended that the petitioner was appointed through a regular selection process and served the respondent-Tripura University for more than 14 years which entails her to claim regularization of her service as Assistant Professor/Associate Professor in the post of BBA programme. Mr. Deb, learned senior counsel has further contended that re-designation of the post of the petitioner as Assistant Placement Officer(Contractual) was illegal and arbitrary *vis-à-vis* pre-judicial to the interest of the petitioner since she was appointed as Lecturer against the post of BBA programme. Learned senior counsel has persistently tried to persuade this Court that since 2008 the petitioner has been serving under the

respondents-Tripura University, firstly, as Lecturer under BBA programme and thereafter, since 2016 as Assistant Placement Officer and refusing to extend the contractual period of the service of the petitioner the respondents-Tripura University has put her in acute hardship.

4.2. Mr. Deb, learned senior counsel has strongly placed reliance upon a decision of the Hon'ble Supreme Court in *Somesh Thapliyal and Anr. v. Vice Chancellor, H.N.B. Garhwal University and Anr.*, reported in (2021) 10 SCC 116 to substantiate the claim of the petitioner that though she was appointed on contractual basis, but, by elapse of over 14 years, her service should not be treated as contractual but regular service since she was appointed through a regular selection process by the competent authority.

5. Submissions on behalf of the respondents-Tripura University:

5.1. Mr. Debbarma, learned counsel for the respondents-Tripura University has vehemently opposed the submissions of the petitioner. To counter the submissions of learned senior counsel appearing for the petitioner, Mr. Debbarma, learned counsel for the respondents-Tripura University has submitted that the very appointment of the petitioner was on contractual basis. Reliance being placed on the decision of the Constitution Bench of the Hon'ble Supreme Court in *Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.*, reported in (2006) 4 SCC 1, Mr. Debbarma, learned counsel for the respondents-Tripura University has submitted that the Constitution Bench has categorically held that “if it is a contractual appointment, the appointment comes to an end at the end of the contract”. At para 45 of *Umadevi(3)(supra)*, the Hon'ble Supreme Court has further observed that “While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the

person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently.”

5.2. Drawing my attention to the counter affidavit filed by the respondents-Tripura University, Mr. Debbarma, learned counsel has submitted that the petitioner has not requisite qualification since she is not NET/SLET/SET qualified which is an essential condition to get appointed as Assistant Professor/Associate Professor under the UGC regulations. Mr. Debbarma, learned counsel has further urged this Court to reject the claims of the petitioner and to vacate the interim order under which the respondents-Tripura University is paying her last pay.

6. Analysis:

I have given my conscious thought to the submissions advanced by learned counsel appearing for the parties.

6.1. At the very outset, I have taken note of the advertisement dated 04.06.2008 issued by the respondents and the advertisement clearly manifests that it invited applications for the post of Lecturer under BBA programme on contractual basis for one year which might be extended on annual basis. The petitioner had fulfilled the requisite qualifications as mentioned in the said

advertisement. Thereafter, I have taken note of the memo. dated 20.01.2009 whereunder the petitioner was appointed as Lecturer under BBA programme on contract basis in the School of Management, Tripura University on a consolidated pay of Rs.15,000/- per month for a period of 1(one) year from the date of joining. Undisputedly, the contractual period of service of the petitioner was extended from time to time till the year 2016 when the post of Lecturer under BBA programme was re-designated under memorandum dated 02.02.2016 issued by the Registrar, Tripura University(A Central University). The petitioner though filed representations raising her grievance against re-designation of her post, but, ultimately accepted such re-designation and continued to work till last extension order expired on 02.01.2022.

6.2. It is settled proposition of law that contractual service, however long it is will not confer any right upon the employee to claim absorption/regularization. There is no quarrel at the bar as regards to the proposition that if the appointment is purely on contractual basis, such appointment would come to an end at the end of the contract period and the Court has no right to extend the period of the contract. The aforesaid view of mine is reinforced by the decision of the Supreme Court in *Umadevi(3)(supra)*.

6.3. At this juncture, I have considered the case of *Somesh Thapliyal(supra)* as referred to by learned senior counsel for the petitioner. Having gone through the facts of the case of *Somesh Thapliyal(supra)*, it is evinced that Somesh Thapliyal was appointed as a Teacher in the Department of Pharmaceutical Sciences which was a constituent teaching department under H.N.B. Garhwal University, a State University governed by Uttar Pradesh State Universities Act, 1973(for short, 1973 Act). The teaching

posts(Lecturer/Reader), later on re-designated as Associate Professor/Assistant Professor were created by the Executive Council which is the Statutory Authority of the University as per Section 19(a) of the 1973 Act from the year 1997 to 2006. In the year 2004, the University had issued an advertisement No.34 dated 04.02.2004 to hold regular selection of teaching posts of the Department of Pharmaceutical Sciences including teaching posts of various departments. Somesh Thapliyal was selected along with other candidates considering his academic qualifications. In the appointment order issued in favour of Somesh Thapliyal it was incorporated that appointment of Somesh was on contract basis initially for 3(three) years which was extended.

6.4. In the context of the said case, the Hon'ble Supreme Court held that the appointment of the petitioner was indeed on substantive basis. It was further observed that H.N.B. Garhwal University was converted to a Central University under the Central Universities Act, 2009 and it took over the assets and liabilities of University created under the 1973 Act, protecting rights and interests of the persons employed in the University before the creation of the Central University in terms of Section 4(d) of the said Act.

6.5. Moreso, the Hon'ble Supreme Court in *Somesh Thapliyal(supra)* had noticed that the communication dated 14.08.2020 was made by the respondents-University wherein the UGC had been informed that the faculty members of the Department of Pharmaceutical Sciences were working against the sanctioned posts from time to time in compliance with the norms of AICTE/PCI and they were appointed as per the required qualification and procedure of selection as provided under the 1973 Act. In that context, the Hon'ble Supreme Court in *Somesh Thapliyal(supra)* held that:[SCC p 135 para 50,51]

“50. In the instant case, after the teaching posts in the Department of Pharmaceutical Sciences have been duly sanctioned and approved by the University Grants Commission of which a detailed reference has been made, supported by the letter sent to the University Grants Commission dated 14-8-2020 indicating the fact that the present appellants are working against the teaching posts of Associate Professor/Assistant Professor sanctioned in compliance of the norms of the AICTE/PCI and are appointed as per the requirements, qualifications and selection procedure in accordance with the 1973 Act and proposed by the University, such incumbents shall be treated to be appointed against the sanctioned posts for all practical purposes.

51. Thus, it can safely be held that the appellants became entitled to claim their appointment to be in substantive capacity against the permanent sanctioned post and become a member of the teaching faculty of the Central University under the 2009 Act.”

7. In the context of the present case, the petitioner was not appointed against a substantive post. The appointment of the petitioner was made on contract basis in terms of the advertisement dated 04.06.2008. The petitioner has no requisite qualification to get her service regularized in the regular scale of pay as that of Assistant Professor/Associate Professor appointed under the UGC Regulations. Being a contractual appointee, no right is conferred upon the petitioner to claim regularization. In the counter affidavit filed by the respondents-Tripura University, it is clearly stated that at the time of advertisement there was no sanctioned post of Lecturer under BBA programme. Furthermore, initiation of regular selection process is the mandate of the Constitutional scheme as enshrined under Articles 14 and 16 of the Constitution of India for appointment or filling up of the posts irrespective of the nature of the posts, but mere selection through a regular selection process to any posts which is to be filled up on contractual basis will not confer any right upon such successful candidate to claim regularization subsequently. Another distinguishing feature, in the instant case, is that in the advertisement

it was clearly mentioned that the appointment was made on contractual basis, but in *Somesh Thapliyal(supra)* it was against the regular posts approved by the State Government and under a specific Act. However, at the time of issuance of the appointment letter it was a paradigm shift from the terms and conditions mentioned in the advertisement issued by the respondent-University and in the appointment letter, for the first time, arbitrarily conditions were incorporated making the appointment of Somesh Thapliyal to be contractual for a period of 3(three) years.

8. In view of this, I find clear distinction between the terms of the appointment of the petitioner of the present case and the appointment made in the case of *Somesh Thapliyal(supra)*, which in no way relatable to decide the controversy raised in the present writ petition. It is reiterated that the appointment of the petitioner was made purely on contract basis as per the terms of the advertisement made by the respondents-Tripura University. The petitioner has no right to claim regularization or to renew her contract period after it has ended on 02.01.2022. सत्यमेव जयते

9. Accordingly, the claim of the petitioner for regularization of her service as Assistant Professor/Associate Professor deserves no consideration and thus, rejected. Again, the office order dated 30.09.2022 issued by the Registrar, Tripura University is a fresh order of engagement and the said order is not in anyway connected to the appointment of the petitioner made under the advertisement dated 04.06.2008 *qua* her appointment as Lecturer under BBA programme.

10. In view of this, the office order dated 30.09.2022 is not interfered with.

11. Resultantly, the instant writ petition filed by the petitioner being devoid of merit is dismissed. Interim order, if any stands vacated.

Pending application(s), if any, also stands dismissed.

JUDGE

Snigdha

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