

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.305/2021

1. Agartala Municipal Corporation, Represented by its Municipal Commissioner, Having its Office at City Centre Complex. Paradise Choumuhani, P.O. Agartala, West Tripura.
 2. Municipal Commissioner, Having its Office at City Centre Complex, Paradise Choumuhani, P.O. Agartala, West Tripura.
 3. Asst. Municipal Commissioner, Having its Office at City Centre Complex. Paradise Choumuhani, P.O. Agartala, West Tripura.
- Appellant(s).

V E R S U S

1. State of Tripura, Represented by Secretary to the Govt. of Tripura, Having his office at New Capital Complex, P.O. Kunjaban, Agartala, District-West Tripura, PIN- 799006.
 2. Abdul Mansur, S/O. Late Raju Miah. Resident of South Chandrapur, P.O. Reshambagan, Agartala, West Tripura.
- Respondent(s).

Along with

W.A. No.76/2022

1. Agartala Municipal Corporation, Represented by the Municipal Commissioner, City Centre Complex, Paradise Chowmuhani, P.O.-Agartala, P.S.-West Agartala, Dist-West Tripura, Pin -799001.
 2. The Municipal Commissioner, Agartala Municipal Corporation, City Centre Complex, Paradise Chowmuhani, P.O.-Agartala, P.S.-West Agartala, Dist-West Tripura, Pin-799001.
 3. The Assistant Municipal Commissioner, East Zone, Agartala Municipal Corporation, Ashram Chowmuhani, (Near Satadal Sangha Club), P.O.-Dhaleswar, P.S.-East Agartala, Dist-West Tripura, Pin-799007.
- Appellant(s).

V E R S U S

1. The State of Tripura, Represented by its Secretary, Urban Development Department, Govt. of Tripura, P.O.-Kunjaban, P.S.-New Capital Complex, Dist-West Tripura, Pin-799006.
 2. Sri Jiban Chandra Saha, S/O.-Late Nitai Saha, R/O- Nagicharra, Partha Colony, P.O.- Nagicharra, P.S.-Srinagar, Dist-West Tripura, Pin-799004.
- Respondent(s).

Along with

W.A. No.145/2022

1. Agartala Municipal Corporation, Represented by the Municipal Commissioner, City Centre Complex, Paradise Chowmuhani, P.O.-Agartala, P.S.-West Agartala, Dist-West Tripura, Pin -799001.
 2. The Municipal Commissioner, Agartala Municipal Corporation, City Centre Complex, Paradise Chowmuhani, P.O.-Agartala, P.S.-West Agartala, Dist-West Tripura, Pin-799001.
 3. The Assistant Municipal Commissioner, East Zone, Agartala Municipal Corporation, Ashram Chowmuhani, (Near Satadal Sangha Club), P.O.-Dhaleswar, P.S.-East Agartala, Dist-West Tripura, Pin-799007.
- Appellant(s).

V E R S U S

1. The State of Tripura, Represented by its Secretary, Urban Development Department, Govt. of Tripura, P.O.-Kunjaban, P.S.-New Capital Complex, Dist-West Tripura, Pin-799006.
 2. Sri Rajib Saha, S/O.-Sri Swapan Saha, R/O- Madhya Bhubanban, P.O.-Bhubanban, P.S.-West Agartala, District-West Tripura.
- Respondent(s).

Along with

W.A. No.146/2022

1. Agartala Municipal Corporation, Represented by the Municipal Commissioner, City Centre Complex, Paradise Chowmuhani, P.O.-Agartala, P.S.-West Agartala, Dist-West Tripura, Pin -799001.
 2. The Municipal Commissioner, Agartala Municipal Corporation, City Centre Complex, Paradise Chowmuhani, P.O.-Agartala, P.S.-West Agartala, Dist-West Tripura, Pin-799001.
 3. The Assistant Municipal Commissioner, East Zone, Agartala Municipal Corporation, Ashram Chowmuhani, (Near Satadal Sangha Club), P.O.-Dhaleswar, P.S.-East Agartala, Dist-West Tripura, Pin-799007.
- Appellant(s).

V E R S U S

1. The State of Tripura, Represented by its Secretary, Urban Development Department, Govt. of Tripura, P.O.-Kunjaban, P.S.-New Capital Complex, Dist-West Tripura, Pin-799006.
 2. Sri Mantu Miah, S/O.-Lt. Rashid Miah, R/O-South Chandrapur, P.O.-Reshambagan, P.S.-East Agartala, District-West Tripura.
- Respondent(s).

For Appellant(s)	: Mr. Arijit Bhaumik, Advocate.
For Respondent(s)	: Mr. Kohinoor N Bhattacharyya, G.A., Mr. P. Roy Barman, Sr. Advocate, Mr. Kundan Pandey, Advocate, Mr. Kawsik Nath, Advocate.

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

Date of hearing and judgment: **12th March, 2024.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Arijit Bhaumik, learned counsel for the appellants. Also heard Mr. Kundan Pandey, learned counsel for the writ petitioners/respondents in W.A. No.305 of 2021, W.A. No.145 of 2022 and W.A. No.146 of 2022 and Mr. P. Roy Barman, learned senior counsel assisted by Mr. Kawsik Nath, learned counsel appearing for the writ petitioner/respondent in W.A. No.76 of 2022.

2. These appeals arise out of the common impugned judgment dated 30.04.2021 passed in a batch of writ petitions and have been tagged together to be heard finally. Therefore, upon hearing learned counsel for the parties and on consideration of the explanation, interlocutory applications seeking condonation of delay bearing I.A. No.02 of 2022 in W.A. No.145 of 2022 and I.A. No.01 of 2022 in W.A. No.146 of 2022 are allowed. Delay is condoned.

3. The learned Writ Court has after consideration of the case of the parties allowed the writ petitions by directing the respondent-Corporation/ appellant herein to treat these petitioners as Daily Rated Workers after

completion of 10 years of service in the year 2013 since they were engaged as Part-time Workers on different dates, i.e. 12.03.2003 in the case of petitioner Abdul Mansur and 05.09.2002, 04.02.2003 and 28.03.2003 in the case of petitioners Jiban Ch. Saha, Rajib Saha and Mantu Miah respectively. The learned Writ Court has thereafter also directed the Corporation to treat the petitioners as Daily Rated Workers henceforth and consider their regularization in the regular scale of pay on completion of 10 years of service as Daily Rated Workers. The appellant-Corporation being aggrieved has preferred these appeals.

4. Learned counsel for the appellants, *inter alia*, has taken twofold pleas:

(i) That, the relevant scheme of regularization dated 21.01.2009 and 04.09.2012 do not contemplate regularization of Part-time Workers. It is meant for regularization of services of DRWs/Casual/Contingent Workers on completion of 10 years of service. It is also submitted that these two schemes and the scheme dated 07.11.2012 regarding engagement of Part-time Workers as DRWs (Group-D) have been repealed by memorandum dated 31.07.2018. The writ petitions have been preferred in the year 2020 much after repeal of the scheme of regularization;

(ii) That, the writ petitioners have set up their case for regularization on the pleadings that they were appointed as Part-time Workers sometime in the year 2002 and 2003 in the individual cases. The information obtained by the petitioners under RTI also does not show that their engagement as Part-time Workers was continuous since 2003 till 2013. The information under RTI or the statement of Muster roll Workers of March, 2003 in the case

of one Jiban Ch. Saha only shows engagement as Part-time Worker or Muster roll Worker for a short period. It is also the case of the appellant-Corporation that the writ petitioners cannot improve their case before the appellate Court in the wake of the clear averments recorded in the order passed by the writ Court where they claimed to be first appointed as Part-time Workers in the relevant years 2002 and 2003 in their respective cases. It is further submitted that both under the scheme of 2009 and 2012 the engagement as DRW/Casual/Contingent Worker should be on full time basis. It is also the case of the Corporation that these appointments were neither regular nor legal for being regularized. They at best work mere for intermittent periods in the year 2003 or 2006 and thereafter since 2011. The learned Writ Court, therefore, committed error in directing the petitioners to be treated as Daily Rated Workers in the absence of any supporting document of their engagement as Casual Worker over a period of 10 years on continuous and full time basis.

5. Learned counsel for the appellants further relies upon the decision of this Court in the case of *The State of Tripura & others vrs. Smt. Suprava Debnath* [W.A. No.112 of 2022], judgment dated 16.10.2023 and also one of the recent decision rendered in the case of *Smt. Maya Dey vrs. The State of Tripura & others* [W.A. No.03 of 2024], judgment dated 20.02.2024. He submits that this Court has on a consistent basis declined to allow such relief of regularization taking into account that the regularization scheme has been abolished in the year 2018 itself and a quietus needs to be given to the old litigation pursued by different aggrieved persons seeking regularization under the State of Tripura and its Corporations.

6. On the part of the writ petitioners, Mr. Kundan Pandey, learned counsel, has drawn the attention of this Court to the statement made in paragraphs-2 & 3 of the writ petition to submit that the case set up by the petitioners was that they were engaged as Casual Worker in the year March, 2003. Learned counsel for the writ petitioner has drawn the attention of this Court to the case of Abdul Mansur where at page-23, a document containing a list of Muster roll Workers of March, 2003 maintained by the Corporation has been enclosed. It shows that the concerned petitioner was engaged in March, 2003. Mr. Kundan Pandey, learned counsel appearing for the writ petitioners in W.A. No.305 of 2021, W.A. No.145 of 2022 and W.A. No.146 of 2022, therefore, submits that the learned Writ Court's direction is proper in the eye of law and does not require any interference.

7. Mr. P. Roy Barman, learned senior counsel assisted by Mr. Kawsik Nath, learned counsel, appears for the writ petitioner in W.A. No.76 of 2022 and has supported the impugned judgment. He has referred to a certificate at page-32 issued by the Executive Engineer (Mechanical), Agartala Municipal Corporation to the effect that the writ petitioner Jiban Ch. Saha was working as a Casual Worker, Group-D, Labour since 05.09.2002 under Mechanical Division on daily wages rate @ Rs.198 only. He has also referred to page-123 containing the list of Casual Workers, a part of the rejoinder affidavit, where the name of the petitioner Jiban Ch. Saha appears at Sl. No.60 and his date of engagement is shown as 2002. It is submitted that the learned Writ Court taking into account these pleadings and the supporting documents has rightly come to a finding that the petitioners had completed 10 years under the Corporation for being treated as Daily Rated employees. The learned Writ Court has only

issued further direction to consider their cases for regularization on completion of 10 years as Daily Rated Workers. The Corporation should not be aggrieved by such a direction. It is also submitted that on 05.01.2018 a number of similarly situated Casual Workers/Daily Rated Workers have been regularized by the Corporation though the petitioners have been unfairly left out. Learned counsel for the petitioner has also relied upon a decision rendered by the Writ Court in the case of *Sri Praloy Goswami vrs. The State of Tripura & others [WP(C) No.166 of 2018]* and other connected matters dated 07.02.2019 where the argument about the repeal of the regularization scheme has not been accepted. He has also referred to the writ appeal preferred by the State of Tripura bearing *W.A. No.163 of 2019* against the said judgment which stood dismissed.

8. We have considered the submission of learned counsel for the parties and taken note of the materials placed on record. We have also taken note of the regularization scheme of 21.01.2009, 04.09.2012 and memorandum dated 31.07.2018 which has repealed these schemes including that of engagement of Part-time Workers as DRWs in different departments of the Government who were engaged on or prior to 31.03.2003 for 2/3/4 hours and have completed 10 years of service as on 01.12.2012.

9. The relevant part of the regularization scheme of 2009 and 2012 are being extracted hereunder:

Regularization Scheme of 2009:

“No.F.10(2)-FIN(G)/2008(Part)
GOVERNMENT OF TRIPURA
DEPARTMENT OF FINANCE

Dated, Agartala, the 21st January, 2009

MEMORANDUM

Subject: Regularization of services of DRWs/Casual/Contingent Workers on the next date of completion of 10 years of service.

The undersigned is directed to inform that the Government has taken a policy decision to regularize services of full-time DRWs/Casual/Contingent Workers from the next date of completion of 10 years of service and fulfill the following criterion as per Departmentwise names and particulars attached herewith:

- (i) DRW/Casual/Contingent workers who were engaged on a full time basis in different Departments with or without concurrence of Finance Department other than Permanent Labourers, Part-time workers, Anganwadi Workers and Helpers, Home Guards, Teachers and Workers engaged under SSA and other Schemes/programmes, may be considered for regularization as per names attached.”

Regularization Scheme of 2012:

“No.F.34(2)-FIN(G)/2012
Government of Tripura
Finance Department

Dated, Agartala, the 4th September, 2012

MEMORANDUM

Subject: Regularization of DRWs/MRWs/Contingent/Casual etc. Workers/ Consolidated Fixed Pay/Fixed Pay Workers of State PSUs and other Autonomous Bodies including AMC/NPs.

It has been decided by the Government that Daily Rated Workers/MRWs/Contingent Workers/Casual etc. Workers/Consolidated Fixed Pay/Fixed Pay Workers, other than Part Time Workers, Contractual/Contract Basis Workers, Honorarium Paid Workers, Workers engaged under SSA and other Schemes/Programmes, in different State PSUs and other Autonomous Bodies including Agartala Municipal Council and Nagar Panchayats, who were engaged on or prior to 31.3.2002 with or without prior concurrence of Finance Department on full time basis and have completed 10(ten) years of service would be considered for regularization subject to the following conditions:

- i) Proposed regularization would be given effect from prospective date.
- ii) The regularization would be against entry level posts of Group-C and Group-D irrespective of the fact whether such workers are drawing higher consolidated pay or otherwise at present. Posts may be created only at entry level of Group-C and Group-D as per need of the respective PSU/Autonomous Body.
- iii) They would continue to perform similar kind of work as they may be doing presently or any other work as may be assigned by the respective PSU/Autonomous Body.
- iv) It should be opened to the PSUs/Autonomous Bodies to suitably re-designate the employees based on their qualifications to meet the needs and requirements of a particular PSU/Autonomous Body so that the services upon regularization can be beneficially utilized.
- v) In case of Workers who are on deputation to any Government Department from the PSUs or Autonomous Bodies, the regularization of such worker is proposed to be done in the parent PSU/Autonomous Body and upon

such regularization, pay and allowances on such regularization would be paid by the Department or Organization to which they are deputed provided they continue on deputation.”

10. Evidently, the scheme for regularization was meant for DRWs/ Muster Roll Workers/Contingent Workers/Casual Workers/Consolidated Fixed Pay/Fixed Pay Workers, but not for Part Time Workers, Contractual/Contract Basis Workers, Honorarium Paid Workers, Workers engaged under SSA and other schemes/programmes, in different State PSUs and other Autonomous Bodies including Agartala Municipal Corporation and Nagar Panchayats, who were engaged prior to 31.03.2003 with or without prior concurrence of Finance Department on full time basis and have completed 10 years of service for the purposes of regularization as per the conditions stipulated therein. We find that before the learned Writ Court it was argued that the petitioners have been engaged on different dates in 2002 and 2003 as Part-time Workers on the strength of which the learned Writ Court directed them to be treated as Daily Rated Workers after completion of 10 years on continuous basis as such Part-time Workers. However, the averments made in the writ petition on the one hand indicate that the petitioners had claimed to be Casual Workers engaged in the year 2002 and 2003 in individual cases but there are no documents to show their continuous engagements from 2002 or 2003 till 2013 on full time basis to substantiate the plea and seek conferment of the status as DRW. On the other hand, the respondent-Corporation has also contended that the petitioners were engaged intermittently sometime in the year 2002 or 2003 and 2006 and thereafter since 2011 on a consistent basis. It, therefore, appears that there are no cogent proof of supporting documents to substantiate the contention of the petitioners that they had remained in continuous engagement on full time basis

as a Casual Worker or a Part-time Worker for being conferred the status of DRW in the year 2013 as has been granted by the learned Writ Court. It is also evident that the relevant schemes of regularization i.e. 21.01.2009 and 04.09.2012 have since been repealed by memorandum dated 31.07.2018. Even the scheme for conversion of Part-time workers as DRWs who were engaged on or prior to 31.03.2003 for 2/3/4 hours and had completed 10 years of service w.e.f. 01.12.2012 has been repealed by the same office memorandum dated 31.07.2018. The writ petitioners approached this Court in the year 2020 after repeal of the scheme. This Court in a recent decision rendered in the case of **Smt. Suprava Debnath** (supra) as relied upon by the learned counsel for the Corporation has after taking into consideration several decisions rendered earlier on the question of regularization expressed its opinion that after the repeal of this regularization scheme in the year 2018, this claim of regularization by individuals coming to the Court thereafter should be given a quietus as it was intended to be a one-time measure in view of the decision rendered in the case of **Secretary, State of Karnataka and others vrs. Umadevi (3) and others** reported in (2006) 4 SCC 1, para-53.

11. In such circumstances and for the reasons recorded hereinabove, we find that not only the writ petitioners have failed to substantiate that they were in continuous engagement on full time basis as a Casual Worker or a Part-time Worker for being conferred the status of DRW and also for the reason that the scheme for regularization stands abolished or repealed w.e.f. 31.07.2018, we are unable to uphold the directions passed by the Writ Court.

12. Accordingly, the instant appeals are allowed. The judgment and order dated 30.04.2021 of the learned Writ Court is set aside.

Pending application(s), if any, also stands disposed of.

(S.D. PURKAYASTHA), J **(APARESH KUMAR SINGH), CJ**

Pulak

PULAK BANIK

Digitally signed by PULAK BANIK
Date: 2024.03.20 14:57:05
+05'30'



सत्यमेव जयते