

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.174 of 2022

Sri Biswajit Nandi,

S/o. Sri Narayan Nandi, resident of village- Devipur (Kenania),
P.S.-Madhupur, P.O.-Kamalasagar,
District: Sepahijala Tripura.

----Appellant(s)

Versus

1. Sri Ratan Das, S/o Late Umesh Das, resident of Kenania, P.S.-Madhupur,
District-Sepahijala Tripura.

2. The State of Tripura, represented by the Secretary, DWS, Government of
Tripura, Agartala.

3. The Executive Engineer, DWS, Sub-Division-Bishalgarh, District-
Sepahijala, Tripura, Pin-799102.

4. The Block Development Officer, Bishalgarh R.D. Block, District-
Sepahijala Tripura, PIN-799102.

5. The Pradhan, Devipur Gram Panchayat, Sub-Division-Bishalgarh, P.S.-
Bishalgarh, District-Sepahijala Tripura, PIN-799102.

----Respondent(s)

WA No.175 of 2022

Sri Biswajit Sarkar,

S/o. Sri Shefal Sarkar, resident of village Kenania,
P.S.-Madhupur, P.O.-Kamalasagar,
District Sepahijala Tripura.

----Appellant(s)

Versus

1. Sri Sanjay Paul, S/o Sri Hiran Paul, resident of Kenania, P.S.-Madhupur,
District-Sepahijala Tripura.

2. The State of Tripura, represented by the Secretary, DWS, Government of
Tripura, Agartala.

3. The Executive Engineer, DWS, Sub-Division-Bishalgarh, District-
Sepahijala, Tripura, Pin-799102.

4. The Block Development Officer, Bishalgarh R.D. Block, District-
Sepahijala Tripura, PIN-799102.

5. The Pradhan, Devipur Gram Panchayat, Sub-Division-Bishalgarh, P.S.-
Bishalgarh, District-Sepahijala Tripura, PIN-799102.

----Respondent(s)

For Appellant(s)	:	Mr. K. Pandey, Advocate
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For Respondent(s)	:	Mr. M. Debbarma, Addl. GA
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Date of hearing & delivery of judgment & order	:	01.08.2024
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Whether fit for reporting	:	Yes
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**HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

The above two writ appeals involve similar and identical questions of law and facts, and as such, these are taken up and heard together for disposal with the consent of learned counsel appearing for the parties.

2. From the notes of the Registry dated 24.01.2023, 27.05.2024 and 26.06.2024, it reveals that notice has properly been served upon the respondent no.1 of both the writ appeals. When the matter came up before this Court on 27.06.2024, it was noted that “...*From the note dated 26.06.2024, it appears that the respondent no.1 has received the notice. However, till today he has not entered his appearance. For ends of justice, further opportunity is given to the respondent no.1 to appear and contest the proceeding. List the matter on 01.08.2024.*” But till today, the respondent no.1, the writ petitioners of both the writ appeals have not entered their appearance to participate in the proceeding.

3. Both the writ appeals have been filed by respondent no.5 in WP(C) No.697 of 2020 and WP(C) No.699 of 2020. The respondent no.1, Sri Ratan Das in WA No.174 of 2022 had filed a writ petition bearing WP(C) No.697 of 2020 stating *inter alia* that while he was performing his duties as Pump Operator, suddenly he was asked not to continue his duties and consequently he was discontinued by the respondents no.2, 3 and 4 of the writ petition. It was the further case of the writ petitioner i.e. the respondent no.1 in the WA No.174 of 2022 that he was not allowed to continue his duties as Pump Operator w.e.f. the month of April, 2018. It was contended before the

learned Single Judge that after the result of Tripura Legislative Assembly Election in the year 2018, the writ petitioner was obstructed by some miscreants from performing his duties. The petitioner had informed the matter to the official authorities over telephone and on 09.04.2018 he informed the matter in writing to the Block Development Officer, but, they neither had taken any action against the miscreants nor provided necessary arrangements for performing his duties. It was further informed to the Block Development Officer, Bishalgarh that the respondent no.5 i.e. Biswajit Nandi, the appellant herein was engaged as Pump Operator in his place. Having pleaded thus, the writ petitioner/respondent no.1 had prayed for following reliefs in his writ petition:

“(i) issue notice upon the respondents,

(ii) issue rule calling upon the respondents to show cause as to why a Writ of mandamus should not be issued directing the respondent No.3 & 4 to provide necessary arrangement for performing the duty as Pump operator in his place of posting,

AND/OR

issue a writ in the nature of mandamus directing the respondent No.4 to sign the work report of the petitioner treating the duty of the petitioner w.e.f. April 2018 till the date of resume his duties,

AND/OR

Issue a writ of mandamus directing the respondent No.3 to release the salary of the petitioner w.e.f. April 2018 and may pass any other order/orders as your Lordship may deem fit and proper.”

4. The State-respondents contesting the writ petition contended before the learned Single Judge that *“the representations submitted by the petitioners’ was forwarded to the Principal Secretary, Govt. of Tripura,*

PWD(DWS) Department on 20.11.2018. Thereafter, the Chief Engineer, PWD (DWS) by the communication under No.F.1(47)-CE/PWD/E/2018 dated 02.01.2019 addressed to the Executive Engineer, DWS Division Agartala-I/ Agartala-II/ Ambassa/ Kamalpur/ Kumarghat/ Dharmanagar/ Udaipur/ Belonia had requested all concerned to repair all the abandoned IRP at the earliest possible time and to submit action taken report by 31st January, 2019 for apprising the competent authority.” The respondent no.5, i.e. the appellant herein could not appear or file any counter affidavit before the learned Single Judge.

5. The writ petitioner in WP(C) No.697 of 2020 contended before the learned Single Judge that the respondents-State did not act upon his representation, rather, verbally assured him that his prayer for allowing him to resume his duties would be considered, but, ultimately there was no positive result.

6. Having heard the learned counsel appearing for the parties, learned Single Judge disposed of the writ petitions in the manner as under:

“12. In this perspective, these writ petitions are disposed of with the following directions:

- (a) The petitioners shall be allowed to discharge their duties as the Pump Operator forthwith.*
- (b) The Officer-in-Charge of the concerned police stations is directed to give the necessary protection to the petitioners.*
- (c) The allegations as made by the petitioners regarding obstruction made by the unruly persons from performing their duties, shall be inquired into by the Block Development Officer/s and after giving the reasonable opportunity to the petitioners, the decision on the salary for the period which has not been paid to the petitioners shall be taken up by the Block Development Officers. If it is found that the petitioners*

were resisted by the unruly villagers, their salary shall be paid in full as the administration has totally failed to provide the petitioners the due protection. However, if it is found that the petitioners have been deliberately absenting themselves from their duties, necessary action, in accordance with law, may be taken by the competent authority i.e. Block Development Officer.

(d) The entire exercise shall be completed within a period of three months from today.

13. With the aforesaid observations and directions, all these writ petitions stands disposed of.”

7. When the matter has come up before this Court, we scrutinized the records relating to the writ petitions. From the note of the Registry dated 02.02.2022, it is revealed that notice has properly been served upon respondents no.4 and 5. The respondent no.5 in both the writ petitions are the appellants herein. This fact was further reflected in the order dated 03.03.2022 passed by learned Single Judge of this Court. From the note of Registry dated 07.05.2022 in WP(C) No.697 of 2020 it is revealed that none of the respondents had filed counter affidavit. So, the writ petition was disposed in absence of counter affidavit vide judgment and order dated 10.05.2022.

8. We have heard Mr. K. Pandey, learned counsel appearing for the appellants. Also heard Mr. M. Debbarma, learned Addl. GA appearing for the respondents-State.

9. The respondent no.1 of both the writ appeals (the writ petitioners) did not enter their appearance despite reasonable opportunities provided to them. Since these writ appeals are concerned to the year 2022, we have taken up the matters as these are listed for hearing today.

10. Mr. Pandey, learned counsel for the appellants has submitted that during pendency of the writ petitions, the appellants were not provided with reasonable opportunity to participate in the writ proceeding. Mr. Pandey has further submitted that the writ petitioners have no *locus* to file the writ petitions as the post of Pump Operator is not a civil post. There is no recruitment rule for the post of Pump Operators since no post of Pump Operator was ever created under Article 309 of the Constitution of India. Hence, the post of Pump Operator cannot be said to be a civil post. Learned counsel for the appellants has placed reliance upon an order dated 03.07.2023 passed in **WP(C) No.890 of 2022** titled as ***Sri Shyamapada Pal vs. The State of Tripura and 12 Ors.***

11. It is the contention of the appellants herein as well as the respondents-State that after the result of Tripura Legislative Assembly Election held in the year 2018, the original writ petitioners i.e. the respondents no.1 herein, were absenting from their duties and after waiting for a considerable period, the appellants were engaged as Pump Operators in the interest of the villagers to distribute/circulate water in the village. According to learned Addl. GA, an enquiry was held and the original writ petitioners were found to be unauthorizedly absenting themselves from their respective duties without prior information to the authority concerned that caused the stoppage of water supply in the village. In that situation, the Panchayats were compelled to engage the writ-appellants as Pump Operators in the interest of public.

12. In a similar matter, one of the learned Single Judge of this Bench (A. Lodh, J), while disposing the case of ***Sri Shyamapada Pal(supra)*** observed that “*It is settled proposition of law that a person having not held*

civil post cannot seek mandamus or the court cannot exercise its discretionary and extra-ordinary jurisdiction, as enshrined under Article 226 of the Constitution of India. The petitioner may claim compensation in an appropriate forum, if he feels that illegalities have been committed towards him by the respondents.”

13. *It is no longer res integra that in the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds “office” during the pleasure of the Governor of the State, except as expressly provided by the Constitution. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Again, a post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State.***[Ref: The State of Assam and Ors. vs. Kanak Chandra Dutta, AIR 1967 SC 884(Five-Judge Bench)]**

(emphasis supplied)

14. In the instant cases, what we find that the respondent no.1(here-in-after referred to as the writ petitioners, for convenience) of both the present writ appeals have failed to substantiate that they were appointed by a State authority. On scrutiny of the records, we find that the writ petitioners did not submit any appointment letter or even engagement letters issued by any authorities of the State. On query to learned counsel appearing for the writ petitioners, it comes to fore that it is an admitted position that they were not having any engagement letters. The writ petitioners also have not disclosed under whose instruction they were engaged as Pump Operators. They also

failed to furnish any document to establish that the post of Pump Operator exists in the department or under the relevant Panchayats. Added to it, the writ petitioners have failed to establish that the posts they held are under the administrative control of the State.

15. In WP(C) No.697 of 2020, the petitioner, Sri Ratan Das has only stated that by virtue of a resolution taken by Devipur Gram Panchayat he was appointed on 01.01.2008, but no copy of such resolution has been submitted by him. Moreso, it is not clear whether the resolution had fixed the remuneration of the Pump Operator. In view of this Court, we are unable to come to a finding that the writ petitioners have been able to establish that at any point of time they had developed master-servant relationship with the State-respondents. That apart, resolution taken by Panchayats cannot be said to have any statutory force. In the considered view of this Court, *such engagement of the writ petitioners, can, at best, be said to be a service on the basis of oral contract between them and the persons concerned who engaged them.*

(emphasis supplied)

16. Another important feature is that the engagement of the writ petitioners did not prescribe any definite rate of pay, which is one of the essential components for a post in any service. Even assuming that the writ petitioners were engaged by Panchayats on the basis of oral contract, then also, it does not contemplate that the writ petitioners used to hold a civil post as defined under Articles 309, 310 and 311 of the Constitution of India.

17. At best, the writ petitioners may seek enforcement of the terms of the oral contract that they might have entered with the persons engaging them, but the remedy of Article 226 is unavailable to enforce such contract. To say it

otherwise, the writ petitioners cannot ask for constitutional remedy under Article 226 of the Constitution of India and if they were aggrieved by any conduct of the State-respondents, then, the appropriate remedy would be to go for civil litigation claiming legitimate damage.

18. We may profitably refer to the decision of the Supreme Court in the case of ***Kulchhinder Singh and Ors. vs. Hardayal Singh Brar and Ors.***, reported in (1976) 3 SCC 828, wherein speaking for the Bench, Krishna Iyer, J clarifying the concept of civil posts observed thus:

“11. There is no doubt that some of the legal problems argued by Sri Ramamurthy deserve in an appropriate case jurisprudential study in depth, although much of it is covered by authority. But assuming, for argument's sake, that what he urges has validity, the present case meets with its instant funeral from one fatal circumstance. The writ petition, stripped of embroidery and legalistics, stands naked as a simple contract between the staff and the society agreeing upon a certain percentage of promotions to various posts or an omnibus, all-embracing promise to give a quota to the existing employees. At its best, the writ petition seeks enforcement of a binding contract but the neat and necessary repellent is that the remedy of Article 226 is unavailable to enforce a contract qua contract. We fail to see how a supplier of chalk to a government school or cheese to a government hospital can ask for a constitutional remedy under Article 226 in the event of a breach of a contract, bypassing the normal channels of civil litigation. We are not convinced that a mere contract agreeing to a quota of promotions can be exalted into a service rule or statutory duty. What is immediately relevant is not whether the respondent is State or public authority but whether what is enforced is a statutory duty or sovereign obligation or public function of a public authority. Private law may involve a State, a statutory body, or a public body in contractual or tortious actions. But they cannot be siphoned off into the writ jurisdiction.

12. The controversy before us in substance will turn on the construction and scope of the agreement when the claim to a quota as founded cannot be decided in writ jurisdiction without going back on well-settled guidelines and even subverting the normal processual law — except perhaps in extreme cases which shock the conscience of the Court or other extraordinary situation, an aspect we are not called upon to explore here. We are aware of the wide amplitude of Article 226 and its potent use to correct manifest injustice but cannot agree that contractual obligations in the ordinary course, without even statutory complexion, can be enforced by his short, though, wrong cut.”

19. After thoughtful consideration of the principles laid down here-in-above, it can easily be said that the post of Pump Operator is not a civil post. Furthermore, after scrutinizing the judgment and order passed in connection with the instant appeals, it is found that the learned Single Judge while disposing of the writ petitions has not considered the legal aspect whether the post of Pump Operator is a civil post as contemplated under Article 311 of the Constitution of India and in that situation, as to whether the writ court can exercise its discretionary and extraordinary jurisdiction as enshrined under Article 226 of the Constitution of India. Another aspect which ought to have considered, but some way, escaped the notice of the learned Single Judge was that, whether the original writ petitioners were obstructed by miscreants or not, was purely a disputed question of fact, which is beyond cavil of writ jurisdiction of this Court.

20. On perusal of the records, we do not find any of such document that the writ petitioners i.e. the respondent no.1 in both the above writ appeals had ever lodged any complaint to the police station alleging that they were obstructed by the miscreants from performing their respective duties since the month of April, 2018. The writ petitioners have even not mentioned the names of the miscreants in their writ petitions who hindered their performance of duties as Pump Operators. So, in absence of disclosure of such facts, the writ petition itself, according to this Court, appears to be frivolous.

21. There is yet another important aspect that, in our opinion, warrants brief discussion. Under the scheme of Panchayats as encapsulated in Article 243 of Part IX of Constitution of India, "Panchayat" means an institution of self-government constituted under Article 243B, for the rural areas. The powers of a Panchayat are defined by the Constitution and relevant

State laws as in the State of Tripura it is governed by the Panchayat Act, 1993. Generally, Panchayats have the authority to appoint staff, but only within the framework of rules and regulations set up by the State government.

If the State government has not framed recruitment rule for a particular post, in that case, Panchayat has no power or authority to appoint any person. As a corollary, any appointment made without rules has to be considered as illegal.

22. In the instant case, the writ petitioners have failed to show that the post of “Pump Operator” ever existed under the respondent-Panchayats or was ever created by the State vesting a power upon concerned Panchayats to fill up or appoint any one under it. Since the learned Single Judge had not considered those important and material aspects, in our opinion, the judgment and order passed by learned Single Judge cannot sustain. As such, in the considered view of this Court, the reliefs granted and the directions passed upon the State-respondents while disposing of the writ petitions by learned Single Judge needs to be interfered with and it is interfered with.

23. For the reasons recorded and discussed here-in-above, we find merit in both the writ appeals and resultantly, both the writ appeals preferred by the appellants stand allowed.

The judgment and order passed by learned Single Judge in WP(C) No.697 of 2020 and WP(C) No.699 of 2020 stand set aside and quashed.

JUDGE

JUDGE

Snigdha

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