

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.90 of 2024

1. **Sebika Tripura,**
W/o-Nandi Kumar Tripura
R/o- Gobinda Sardar Para, I.C.D.S. Center Manu Bazar,
District:- South Tripura, Pin- 799143.
2. **Draw Kumar Reang,**
S/o- Kanuram Reang
R/o- Dakshin Karbook,
P.O- Karbook, District:- Gomati Tripura, Pin-799104
3. **Abhadhan Tripura**
S/o- Sri. Dibya Kr. Tripura,
Vill- Annadhan Para, P.O: Satchand
P.S- Manu Bazar, South Tripura.
4. **Ajit Debbarma**
S/o- Lt. Badural Debbarma,
Vill- Pafama Chara, P.O- L.C. Para.
P.S.- Ambassa, Dhalai Tripura.

.....Petitioner(s).

Versus

1. **The State of Tripura,**
to be represented by the Secretary, Tribal Welfare Department,
Government of Tripura, New Secretariat Building,
New Capital Complex, Kunjaban,
P.S.- New Capital Complex, Agartala, West Tripura, PIN: 799010.
2. **The Member Secretary,**
Tripura Tribal Welfare Residential Educational Institutions Society
(TTWREIS), Gurkhabasti, Agartala, Tripura West,
3. **The Principal**
Residential School, Bhuratali
Sabroom, South Tripura.
4. **The Principal,**
Residential School Ashram School,
Karbook, Amarpur, South Tripura.
5. **The Principal,**
Residential School, Bhuratali, Sabroom,
South Tripura.
6. **The Principal,**
RMM Ashram School, Sadhutilla, Ambassa,
Dhalai Tripura,

.....Respondent(s).

For Petitioner(s)	:	Mr. P. Roy Barman, Senior Advocate.
	:	Mr. K. Nath, Adv.
For Respondent(s)	:	Mr. D. Sarkar, Adv.
Date of Hearing and		
delivery of Judgment & Order :		13th February, 2025
Whether fit for reporting	:	No

_B_E_F_O_R_E_
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (ORAL)

Heard Mr. P. Roy Barman, learned senior counsel appearing for the petitioners as well as Mr. D. Sarkar, learned counsel appearing for the State-respondent nos.2 to 6.

[2] Mr. Roy Barman, learned senior counsel submits that the petitioners were engaged as DRWs (Group-D) vide memorandum dated 15.02.2010 (*Annexure-1*) issued by Tripura Tribal Welfare Residential Educational Institutions Society [in short, TTWREIS] and the petitioners along with 08(eight) other persons (in total 12 nos.) were also offered appointments to the post of Group-D on DRW (Daily Rated Workers) basis and accordingly, offer of appointments were also issued vide memorandum dated 16.03.2010 (*Annexure-2,3,4 & 5*). Thereafter, they joined as DRW either on 17.03.2010 and 18.03.2010 as evident from memorandum dated 09.03.2010 issued by Member Secretary, TTWREIS (*Annexure-6*).

[3] Mr. Roy Barman, learned senior counsel also submits that meanwhile the Government of Tripura in view of the direction issued by Hon'ble Supreme Court of India in ***Secretary, State of Karnataka and Ors. Vs. Umadevi (3) & Others, (2006) 4 SCC 1***, issued some notifications regarding regularisation of such DRWs/Casual Workers/Contingent Workers upon completion of 10(ten) years of their services, but services of none of the above said twelve DRWs were regularised.

[4] Thereafter, two persons namely Sri Upendra Tripura and Sri Senchandra Tripura filed WP(C) No.860 of 2021 before this Court praying for regularization of their services as Group-D employee and a coordinate bench of this Court vide judgment dated 15.03.2022 passed the following order :

"23. Having appreciated the submissions of the learned counsel appearing for the parties and having taken note of the proposal sent by the Tripura Tribal Welfare Residential Educational Institutions Society vide Note No.19 [as reproduced], this court is of the view that the respondents shall consider the regularization of the petitioners in the post of Cook cum Mashalchi/Watchman in the scale of pay of Rs.4,840-13,000/- GP-1,400/- under Tripura State Pay Matrix, PB-1 Cell-1, Level-1, Entry pay-Rs.16,000/-, not in terms of the policy of the government which have been repealed but for their completing of their ten years of service as the Daily Rated Worker. From the Note No.19, it is evident that the competent authority in the Society has taken the responsibility of finance, as may be required for such regularization, having clearly declared as under :

"The requirement of fund for the said purpose will be borne from the Grant to EMR School and Recurring Grant to Society as per the details herein below :

For 01 (one) No. DRW staff					
Present wages		Fixed Pay Basis		Regular Pay Basis	
Monthly	Yearly	Monthly	Yearly	Monthly	Yearly
6,900/-	82800/-	12,000/-	1,44,000/-	18,080/-	2,16,960/-
@ Rs.230/- per day		(75% of initial pay)			
For 11(eleven) nos. DRW staff					
Present wages		Fixed Pay Basis		Regular Pay Basis	
Monthly	Yearly	Monthly	Yearly	Monthly	Yearly
75,900/-	9,10,800/-	1,32,000/-	15,84,000/-	2,16,960/-	26,03,520/-

Therefore, the posts for such regularisation be created by the respondents.

24. In this juncture, this court may refer to a decision of the apex court in **Nihal Singh and Others Versus State of Punjab and Others** reported in **(2013) 14 SCC 65** where it has been held :

"32. Coming to the other aspect of the matter pointed out by the High Court - that in the absence of sanctioned posts the State cannot be compelled to absorb the persons like the appellants into the services of the State, we can only say that posts are to be created by the State depending upon the need to

employ people having regard to various functions the State undertakes to discharge.

"Every sovereign Government has within its own jurisdiction right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration."42 American Jurisprudence 902, para 31

33. It is no doubt that the assessment of the need to employ a certain number of people for discharging a particular responsibility of the State under the Constitution is always with the executive Government of the day subject to the overall control of the Legislature. That does not mean that an examination by a Constitutional Court regarding the accuracy of the assessment of the need is barred.

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State."

[Emphasis added]

Therefore, the direction as regards creation and sanction of posts has been made on the assessment made by the competent authority for regularization of the petitioners and others.

25. As regards the other two reliefs, it is directed that if the petitioners are getting less wage than as directed in **Jagjit Singh**(supra), than they shall be paid equivalent wage, minimum to the scale of the Group-D employee of Tripura Tribal Welfare Residential Educational Institutions Society.

26. So far the recording of the education qualification is concerned, the respondent No.2, after verification of the qualification certificate if it is found that the same has been issued from any institute, approved by the Government of India or by the Government of Tripura that, may be reflected in the service records of the petitioner No.1. The directions as regards regularization and payment of wage shall be carried within a period of 3 (three) months from the date when a copy of this order will be furnished by the petitioners.

In terms of the above, the writ petition stands allowed and disposed of.

No order as to costs."

[5] Challenging the said judgment, Mr. Roy Barman, learned senior counsel submits, the respondents then preferred

WA No.153 of 2022 which was also dismissed the Division Bench of this Court on 12.12.2022 and thereafter the respondents preferred a Special Leave Petition(Civil) Diary No(S).20762 of 2023 and the Hon'ble Apex Court vide order dated 04.09.2023 dismissed the same.

[6] As submitted by Mr. Roy Barman, learned senior counsel, another Ananta Reang standing on the same footing also filed WP(C) No.737 of 2020 praying for such regularization and vide judgment dated 10.05.2022, another coordinate bench of this Court allowed said writ petition with the following observations:

"The facts are admitted, but the way the petitioner has been treated is grossly arbitrary, as someone cannot be discarded for being younger. It has been admitted by the respondents that the petitioner was senior in service to Santosh Kumar Tripura. Despite that his name was not recommended. According to this court, that was grossly arbitrary. As Santosh Kumar Tripura has been appointed as the night watchman on the fixed pay basis, against the regular post, the petitioner ought to have been similarly treated by engaging him against the fixed pay post of Cook cum Masalchi, attendant and cleaner. The vacancies are available, but the respondents have not been considering his case.

It may also be noted that the petitioner was, however, engaged as a Group-D personnel (DRW) but initially the petitioner was accommodated against a vacancy meant for the UR category candidates.

The respondent No. 2 has categorically stated in para 10 of the reply that they are agreeable to appoint the petitioner on a regular post on fixed pay basis and for that purpose they have sent the records for approval of the finance department. Such approval is being awaited.

As this court finds that there is clear discrimination against the petitioner while appointing Santosh Kumar Tripura as his case was not at all considered. The respondent No.2 shall appoint the petitioner in the post of cook cum masalchi on similar terms and conditions as laid down in the memorandum dated 24.09.2011 (Annexure-6 to the writ petition).

Such appointment shall be made in favour of the petitioner within three months from the date when the

petitioner shall submit a copy of the order to the respondent No.2.

In terms of the above, this writ petition stands allowed and disposed of. No order as to costs."

[7] Mr. Roy Barman, learned senior counsel further submits that in compliance with the above said judgment of this Court the services of said three petitioners were already regularized and thereafter other two persons namely Tripurna Joy Tripura and Dhananjoy Reang from the list of said twelve numbers of DRWs also preferred WP(C) No.681 of 2023 and after taking note of all these previous facts and also on consideration of the contentions of the parties, this Court passed the order of regularization of above said two petitioners in the following terms on 24.01.2025:

"16. In view of above, the writ petition is allowed. The respondents are directed to consider the regularization of the petitioners to the posts of Cook-Cum-Masalchi/Watchman on completing their 10(ten) years of service as DRWs. However, before such regularization, the respondents will be at their liberty to verify other conditions of the service as per the rules and procedure. Their pay will be fixed notionally from the date of regularization and actual financial benefits shall be paid to them w.e.f. 3(three) years prior to the filing of the writ petition as arrear. The entire process should be completed within 3(three) months from the date the petitioner furnishes copy of the judgment to the respondents.

With the above said observation(s), the writ petition is disposed of.

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

[8] Mr. Roy Barman, learned senior counsel, under such circumstances, submits that in view of said decisions of this Court and as also affirmed by the Apex Court in one case, the present petition may be allowed.

[9] Learned counsel for the respondents argues that before completion of 10(ten) years of service as per the said scheme of regularization, that scheme itself was withdrawn. Moreover, those schemes were not applicable in the case of present petitioners. However, learned counsel admits that the present case is covered by the decisions of above said cases.

[10] This court has given due consideration to the rival contentions and the materials placed before the court. From Note no.25 dated 07.05.2021(*Annexure-R1*), it appears that the department itself proposed for regularization of services of above said eleven persons including present four petitioners except one who had already resigned from the service meanwhile and in Note no.25 it was also stated by the concerned department that if their regularization is considered, then for their salary etc., expenditure may be met out of the fund received under Recurring Grants of EMR Schools and Grant to Ashram Schools. Such note also indicates that there was no fund constraints in case of their regularization. Above all, taking note of all the contentions of the parties, this Court already directed regularization of other similarly situated persons as indicated above and as further affirmed by the Hon'ble Apex Court in one such case and it being also the admitted position that the present case the petitioners are also covered by the previous decisions, this writ petition deserves to be allowed.

[11] Accordingly, the writ petition is allowed.

The respondents are directed to consider the regularization of the present petitioners to the post of Group-D on completion of 10(ten) their years of services as DRWs. However, before such regularization the respondents will be at liberty to verify other conditions of the services as per the rules and procedure and their pay will be fixed notionally from the date of regularization and actual financial beneficial will be paid to them w.e.f. 03(three) years prior to the date of filing of the writ petition as arrear.

The entire process should be completed by the respondents within three months from the date the petitioners furnish copy of the judgment to the respondents.

With such observation and directions, the writ petition is disposed of.

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

JUDGE

**SATABDI
DUTTA**

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