

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.188 of 2024

Sri Bimal Kanti Debnath,
S/o Late Makhan Chandra Debnath,
(Aged about 54 years), Resident of Ramnagar Road No.8,
Sarada Palli, P.O. Ramnagar, P.S. West Agartala, Sub-Division-
Agartala, District- West Tripura, PIN- 799002.

.....Petitioner(s)

- V e r s u s -

- 1. The State of Tripura,**
Represented by the Secretary, Public Works Department,
Government of Tripura, New Capital Complex, P.O. Kunjaban, P.S.
New Capital Complex, District- West Tripura, PIN- 799010.
- 2. The Secretary,**
Department of Finance, Government of Tripura, New Capital
Complex, P.O. Kunjaban, P.S. New Capital Complex, District- West
Tripura, PIN- 799010.
- 3. The Deputy Secretary,**
Public Works Department (R&B), Government of Tripura, New
Capital Complex, P.O. Kunjaban, P.S. New Capital Complex,
District- West Tripura, PIN- 799010.
- 4. The Chief Engineer,**
Public Works Department (R&B), Government of Tripura, Netaji
Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West
Tripura, PIN-799001.

..... Respondent(s)

- 5. Sri Shibu Deb,**
Son of Motilal Deb, Work Assistant, Office of Assistant Engineer,
Central-VIII Sub-Division, A.D. Nagar, P.O. & P.S.- A.D. Nagar,
Agartala, District- West Tripura.

..... Proforma Respondent(s)

For the Petitioner(s)	:	Mr. Sankar Lodh, Advocate. Mr. Subham Majumder, Advocate.
For the Respondent(s)	:	Mrs. Riya Chakraborty, Advocate.
Date of hearing and delivery of Judgment & Order	:	9th April, 2025.
Whether fit for reporting	:	YES.

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (Oral)

Heard Mr. Sankar Lodh, learned counsel appearing for the petitioner and Mrs. Riya Chakraborty, learned counsel appearing for the respondents, now respondent Nos.1 to 4.

2. The case of the petitioner is that he joined as Daily Rated Worker (for short, DRW) on 08.08.1988 under the official respondents and at that time, his educational qualification was Madhyamik plucked. However, while serving as DRW, he passed Madhyamik examination in the year 1994 and in the year 1996, he also passed HS (+2 stage) examination and finally, in the year 1999, he passed B.A. from Tripura University. Thereafter, as alleged by the petitioner, with the concurrence of the Finance Department, the services of 343 numbers of DRWs/Casual/Contingent workers including the petitioner serving under the Public Works Department (for short, PWD) were proposed to be regularized and the service of the petitioner was proposed to be regularized against Group-C post with mentioning of academic qualification to be B.A. passed, but vide office order dated 16.04.2008, his service was regularized against the post of Peon. Initially, in the said office order, the name of the petitioner was wrongly written as 'Bimal Kanti Majumder' which was later on corrected vide a corrigendum dated 19.04.2008, as 'Bimal Kanti Debnath'. Thereafter, according to the petitioner, he appeared in the departmental type test examination and successfully passed it, and then, vide order dated 04.03.2014, he was appointed on promotion as LDC. Thereafter, his pay was fixed from the date of his joining on the promotional post in the year 2014.

3. Now, it is the grievance of the petitioner that the respondent No.5, Sri Shibu Deb, also joined the PWD as DRW on 08.08.1988, and at that time, he was also Madhyamik plucked and he passed Madhyamik examination in the year 1989, i.e., after his engagement as DRW and vide office order dated 10.01.2008, his service was regularized in the post of Peon w.e.f. 01.01.2007, but suddenly on 29.05.2021, a fresh appointment letter was issued in his favour appointing him to the post of Work Assistant on regular basis w.e.f. the date of regularization of his service in the post of Group-D in cancellation of his earlier appointment letter issued on 10.01.2008 and it was also ordered that his pay scale be fixed in the relevant grade for regularization with prospective effect, but with notional fixation from 01.01.2007.

4. Mr. Lodh, learned counsel submits that the present petitioner is similarly situated person like said proforma-respondent No.5, Sri Shibu Deb, whose pay was ordered to be notionally fixed against Group-C post w.e.f. 01.01.2007, whereas the pay of the present petitioner was fixed against such Group-C post only from the year 2014. Learned counsel also refers to a judgment dated 13.09.2024, passed by a coordinate bench of this Court in a case passed in **Smt. Anima Debnath versus The State of Tripura & Others** in **WP(C) No.410 of 2024** and another judgment of the same date in case of **Smt. Aparajita Bhowmik versus The State of Tripura & Others** in **WP(C) No.411 of 2024**, wherein both the said cases, the petitioners were also similarly situated persons like the present petitioner, but taking note of the case of the said proforma-respondent, Sri Shibu Deb, this Court directed the respondents-State to consider the cases of the petitioners for their appointment as Group-C employee in accordance with the Recruitment Rules prescribed for the post of Group-C within a

period of 3(three) months from the date of receipt of order. Thereafter, in terms of said judgments, both the said petitioners, who were Group-D employees were promoted as Lower Division Clerk (Group-C) w.e.f. the date of regularization of their services against such Group D posts i.e. from 01.07.2008, vide two office orders issued by the PWD on 02.01.2025. Mr. Lodh, learned counsel submits that the present case is also covered by the decisions of both the said two cases, and therefore, necessary direction may be passed to the respondents for fixation of the petitioner's pay notionally w.e.f. 01.07.2008 as Group C employee.

5. Mrs. Chakraborty, learned counsel, on the other hand, argues firstly that the petitioner before passing the Madhyamik examination or HS (+2 stage) examination, did not obtain any permission from the Department and secondly that on promotion to the post of LDC, the present petitioner gave his option for pay fixation w.e.f. 2014, and now suddenly, after so many years he has approached this Court for such notional fixation w.e.f. 01.01.2007, i.e., from the date when notional fixation in case of Sri Shibu Deb was given effect and, therefore, the petition suffers from delay and laches.

6. Mrs. Chakraborty, learned counsel also relies on a decision of the Hon'ble Supreme Court in **Basawaraj and Another versus Special Land Acquisition Officer, (2013) 14 SCC 81**, wherein it was observed by the Apex Court that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. It was also observed that

if a wrong is committed in an earlier case, it cannot be perpetuated. It was further observed that equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner.

7. This Court has taken note of the submissions of both sides and has perused the record. So far the plea raised by the respondents that without permission of the Department, the petitioner appeared in Madhyamik examination is concerned, this matter has already been dealt with in the judgments dated 13.09.2024 passed in said WP(C) No.410 of 2024 and WP(C) No.411 of 2024. The Court in those cases observed that as the petitioners were working as Casual Workers, there was no necessity for them for obtaining 'No Objection Certificate' (for short, NOC) from the competent authority. Same principle will also apply in the present case. Above said judgments are not challenged by the respondents-State in a higher forum, rather, they have complied with the directions of the Court. It is also a fact that, vide office order dated 29.05.2021, regularization of service of said Sri Shibu Deb against Group-C post was given w.e.f. 01.01.2007, i.e., from the date when service of said Sri Shibu Deb was regularized as Group-D employee.

8. It is not the case of the respondents that wrongly the service of said Shibu Deb was regularized against Group-C post w.e.f. 01.01.2007, and therefore, the ratio as laid down in **Basawaraj and Another (supra)** as indicated above, is not applicable in the present facts involved in this case. It is also discernible that the present case is squarely covered by the decisions of this Court passed in WP(C) No.410 of 2024 and WP(C) No.411 of 2024, which are unchallenged by the respondents.

9. Considering all these aspects, this Court is of the view that the petitioner is also entitled to get similar benefits as was provided to Sri Shibu Deb.

In view of above said discussions, the writ petition is allowed. The respondents are directed to consider the case of the present petitioner for fixing his pay against Group-C post notionally w.e.f. 01.01.2007 till the date from when actual financial benefits were provided to him.

With such observations and direction, the writ petition is disposed of.

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



JUDGE

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