

IN THE HIGH COURT OF TRIPURA
A G A R T A L A

W.A. No.24 of 2024

1. **The Tripura State Council for Science & Technology,**
represented by its Member Secretary, Vigyan
Bhawan, Gorkhabasti, P.O. Kunjaban, P.S. New
Capital Complex, West Tripura District, PIN-799006
2. **The Joint Member Secretary,**
Tripura State Council for Science & Technology,
Vigyan Bhawan, Gorkhabasti, P.O. Kunjaban, P.S.
New Capital Complex, West Tripura District, PIN-
799006

..... **Appellant(s)**

- V e r s u s -

1. **Sri Sanjoy Sen**
son of Sri Anil Chandra Sen, resident of North
Badharghat, P.O. & P.S. A.D. Nagar, District- West
Tripura, PIN-799003
2. **The State of Tripura,**
represented by the Secretary, to the department of
Science & Technology and Environment, Government
of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
West Tripura District, PIN-799006
3. **The Principal Secretary,**
Department of Finance, Government of Tripura, P.O.
Kunjaban, P.S. New Capital Complex, West Tripura
District, PIN-799006

..... **Respondent(s)**

For the Appellant(s)	:	Mr. A. Bhowmik, Adv.				
For the Respondent(s)	:	Mr. M. Debbarma, Addl. GA				
Date of hearing	:	08.04.2025				
Date of delivery of Judgment & order	:	06.05.2025				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td>√</td><td></td></tr></table>	YES	NO	√	
YES	NO					
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**HON'BLE THE CHIEF JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER

This appeal arises out of the judgment dated 16.08.2023 passed by the learned Writ Court in W.P.(C) No.651 of 2022 in the following terms:

"For the reasons stated and discussed here-in-above, I direct the Respondents-TSCST to complete the process of regularization and absorption of the petitioner to the post of Project Officer within a period of 3(three) months from the date of this judgment and till such process is completed, they are directed to release minimum pay in the regular pay scale to the petitioner as prescribed for the post of Project Officer from the month of August, 2023, which is payable in the month of September, 2023."

[2] Pursuant to an advertisement dated 26.06.2006 for Walk-in-interview issued by Tripura University for recruitment in the temporary post of Junior Project Fellow for a period of one and half years in respect of the project, namely "*Hardening of elected tissue cultured plants and their demonstration plantation in Tripura*", the petitioner applied for the said post and was selected by the University Authority. The petitioner accordingly joined to the said post preceded by a letter dated 11.7.2006 sent by the Registrar of the University in this regard to him. Prior to that, a Memorandum of Understanding was entered on 23.08.2004 (Annexure-3 to the writ petition) between the Tripura University and Tripura State Council for Science and Technology (the appellant No.1) pertaining to said project. Pursuant to the terms and conditions of said MOU, the writ petitioner was deputed to

Tripura State Council for Science and Technology (for short-TSCST) w.e.f. 15.07.2006 and since then, he is continuing to render his service in that institution. Meanwhile, one post of Project Officer in the department of appellant No.1 fell vacant and thereafter, by a conscious decision of the appellant No.1, followed by the approval of the Member, Deputy Secretary as well as the Principal Secretary, Department of Science, Technology and Environment, and the Minister in the charge of the said department, the petitioner was appointed as Project Officer against said vacant post (UR category) on fixed pay basis with remuneration of Rs.8,000/- per month keeping the said regular post in abeyance vide memorandum dated 15.12.2012 (Annexure-6 to the writ petition). Since then, he has been serving in said post for more than a decade.

[3] It is the grievance of the writ petitioner that he joined in the said post on a fixed pay basis but on completion of 5 years of service on 18.12.2017 he was not favoured with the benefit of regular pay scale of Project Officer nor his service was regularised in terms of the memorandum issued by the Finance Department dated 16.10.2007. Therefore, the writ petition was filed. Learned Writ Court in that backdrop, passed the above said order.

[4] Mr. M. Debbarma, learned Addl. GA appearing for the appellant-respondents argues that as per Clause 14(g)(iv) of

Rules and Regulations of the Council, the matter of creation of posts in the Council and appointment, regularisation and promotion of the employees of the council vest with the executive body of the Council and in the instant case, no decision was ever taken in any meeting of the executive body for appointment or regularisation of service of the petitioner in any posts of the council, rather he was engaged through an advertisement published by the Tripura University and after participating in the Walk-in-Interview, he was engaged on fellowship basis against the vacant post of the University. According to Mr. Debbarma, learned Addl. GA, the recruitment rules, meant for the post of a Project Officer (Group-A) as framed by the Department of Science, Technology and Environment, does not permit regularisation/absorption of any fixed pay employee in the said post, rather same is required to be filled up only through direct recruitment and therefore, regularisation of the writ petitioner in the above said post of Project Officer is not permissible as per the Rules.

[5] Mr. A. Bhowmik, learned counsel, on the other hand, appearing for the writ petitioner argues that the initial engagement of the writ petitioner was through a fair process of selection by publishing advertisement etc. and he also possesses all the requisite qualifications meant for the post of Project Officer and therefore, he is eligible for appointment to the said post as

regular employee. Mr. Bhowmik, learned counsel further argues that when the writ petitioner was appointed on a fixed pay basis against the said sanctioned post of Project Officer keeping the said post in abeyance, there was no objection from the side of the respondents regarding such appointment, rather, they derived the services of the writ petitioner for such a long period and when his claim for regularisation has come forward, they are trying to somehow defeat the same. Mr. Bhowmik, learned counsel also contends that apart from the writ petitioner, there were 12 others project personnel in the Council and all of them have been regularised against Group-A post with regular pay scale from the date of their initial appointment, except one Dr. Jayabrata Roy who was appointed on a fixed pay basis only for one year.

[6] Mr. Bhowmik, learned counsel further submits that after his appointment, the service book of the writ petitioner was also opened by the Council treating him as a regular employee and from time to time, he also received the revised/increased rate of 75% of the revised pay scale. Mr. Bhowmik, learned counsel refers to Clause-17(ii) whereby power of appointment and dismissal of the employees of Council with approval of Chairman or the Vice Chairman, has been vested upon the Member Secretary of the Council. According to Mr. Bhowmik, the Minister in charge of the Department of Science, Technology and Environment is the Vice

Chairman of TSCST. The Member Secretary of the Council, Mr. Bhowmik submits, is therefore the competent authority to appoint any employee of the Council and the proposal for appointment of the present writ petitioner was first initiated by Senior Scientific Officer of the said department and the same was duly approved by the Principal Secretary of administrative department i.e. Department of Science, Technology and Environment and the Minister in charge i.e. the Vice Chairman of the Council and therefore, such appointment was made following the due procedure of the related rules and it was not at all a case of unfair or backdoor employment. Mr. Bhowmik further submits that as per the regulations of the Council, the Principal Secretary of the Administrative Department is the Member Secretary of the Council.

[7] Mr. Bhowmik, learned counsel strenuously argues that keeping a person on a fixed pay basis for an indefinite period and deriving the benefit of such service similar to a regular employee, is nothing but exploitation of the petitioner and such a sanctioned post cannot be kept in abeyance for uncertainty. Mr. Bhowmik, learned counsel also in the alternative, argues that the post of Project Officer is a Group-A post and the State does not have any policy for appointment on a fixed pay basis against any Group-A or Group-B post and therefore, the respondents are duty bound to

provide regular pay scale to the writ petitioner alongwith his regularisation of service.

[8] We have given our anxious consideration to the rival submissions of the parties and also gone through the record meticulously. The learned Writ Court has categorically dealt with all the issues as raised from the side of the appellants. The relevant paragraphs containing the discussions and the decision of the learned writ court on these points are extracted hereunder:

"6.1 Indubitably, the petitioner was first appointed under Tripura University through regular recruitment process as JPF. In terms of a MOU, the petitioner was transferred on deputation to TSCST and in pursuance of a policy decision taken by the competent authorities of TSCST, the petitioner was appointed as Project Officer on fixed pay basis of Rs.8000/- per month with a stipulation that after 5 (five) years he would be provided with regular pay scale applicable for the post of Project Officer. The petitioner reported his joining and it was accepted by the authority concerned w.e.f. 18.12.2012. Admittedly, since then, the petitioner has been discharging his duties and responsibilities as Project Officer under the TSCST. I have taken note of the submission of learned senior counsel, Mr. Bhattacharya that this post of Project Officer is not a sanctioned post. That gives me to peruse the Memo. dated 4th April,2007 [Annexure-X, page 79 of the counter affidavit] and on reading of the same, it transpires that the Government of Tripura had approved the creation of post for the Department and Bodies concurred by the Finance Department as indicated under Annexure-I and Annexure-II enclosed to the said Memorandum. Under Annexure-II at Sl. No.25 of the said memorandum, it comes to fore that the Government of Tripura has sanctioned two posts of Project Officers/Scientific (TSCST) in the pay scale of Rs.7,800-15,100/-. From the Memorandum dated 26.04.2023 [Annexure-Y, page 84 of the counter affidavit] it is revealed that the Government of Tripura has approved towards continuation of one post of Project Officer with Pay Band-4 in the scale of pay of Rs.15,600-39,100/-, with G.P. of Rs.5,400/- as per ROP, 2017. It is further clear that on inspection of roster Recruitment Rules for the post of Project Officer, provisions have been made for two posts of Project Officer under the said Recruitment Rules [Annexure-9, page 33 of the writ petition]. So, there cannot be any

quarrel that the post of Project Officer is a sanctioned post having financial concurrence by the appropriate authority.

6.2 In view of this, I cannot agree with the submissions of Mr. Bhattacharya, learned senior counsel appearing for the Respondents-TSCST that the post of Project Officer has no financial concurrence and it was not sanctioned by the Government of Tripura and accordingly, it is repelled.

6.3 I have taken into consideration the decision rendered in *R.J. Pathan (supra)*. The facts of the case is that the petitioners were claiming regularization against the posts they were working under a Project which was known as "Project Implementation Unit" and the Division Bench of the concerned High Court had directed the Government to create supernumerary post for regularization of their services, which the Hon'ble Supreme Court had interfered with. So, the facts of the present case are wholly different from the facts of *R.J. Pathan (supra)*."

[9] There is no dispute that the post of Project Officer is a sanctioned post having the financial concurrence. The writ petitioner relied on a memorandum dated 04.04.2007 issued by the Department of Science, Technology and Environment which shows that the State had approved regularisation of 24 posts created earlier without concurrence of the Finance Department, alongwith creation of 10 additional posts for meeting the reservation roster and further creation of 36 other different posts in the Council as per the statement of Annexure-II of the said memorandum. The said Annexure-II shows that the sanction was given for two posts of Project Officers in TSCST. Further another post of Project Officer was also created by the State vide memorandum dated 26.04.2023. Therefore, the learned Writ Court rightly came to the conclusion that the writ petitioner was

engaged on a fixed pay basis against the sanctioned post by negating the claim of the appellants that his appointment was not against any sanctioned post. So far the issue as raised before us that only the executive body of the Council has the power to appoint/regularise/promotion to the employees of the Council against created/vacant post is concerned, it appears that the Council in their counter affidavit submitted before the learned Writ Court did not raise any such plea and for the first time took in this appeal. On the other hand, it appears that appointment of the petitioner was processed following the provisions of Clause-17 of the Regulation and was finally approved by the Vice Chairman of the Council.

[10] The appellants have not asserted that the writ petitioner does not have the requisite qualification as is prescribed for the post of Project Officer. It is also a fact that for a considerable period i.e. for more than a decade, his service as Project Officer is being utilised by the Council. It appears from note No.4 of the Council (Annexure-5 of the writ petition) that a conscious decision was taken by the Council by accepting the proposal of Senior Scientific Officer for appointment of the writ petitioner on a fixed pay basis against the vacant post of Project Officer keeping the said post in abeyance. The said proposal was accepted up to the level of the Ministry of Science, Technology and

Environment, Government of Tripura and accordingly, the memorandum dated 15.12.2012 (Annexure-6 to the writ petition) was issued by the Joint Member Secretary of the Council. Therefore, even if the argument of the appellants' side is accepted that the petitioner was appointed without approval of executive body of the Council, it can at best said to be an irregular appointment and not an illegal appointment.

[11] Recently, the Supreme Court of India in **Jaggo Vs. Union of India and Others, 2024 SCC OnLine SC 3826** was dealing with an issue of regularisation of services of some Safaiwali and Khallasi engaged on part time adhoc basis. Hon'ble Supreme Court while taking into consideration of the facts that despite being labelled as "part-time workers," they performed the essential tasks of cleaning etc. on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades, observed that their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Finally, while directing their regularisation in the service the Apex Court held as under:

"25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-

term obligations owed to employees. These practices manifest in several ways:

- **Misuse of “Temporary” Labels:** Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as “temporary” or “contractual,” even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.
- **Arbitrary Termination:** Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.
- **Lack of Career Progression:** Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.
- **Using Outsourcing as a Shield:** Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.
- **Denial of Basic Rights and Benefits:** Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. While the judgment in *Uma Devi* (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are

not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in *Uma Devi* (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country."

[12] In the case in hand as discussed earlier, the entry of the writ petitioner in the service was not illegal or through any back door appointment. His appointment was against a sanctioned post on fixed pay basis. The services which he has been rendering are in relation to the essential tasks of functioning of the Council for which sanction post has been created. His period of service in said post is more than a decade and the fact that for such a long period, he was allowed to serve so, leads to an inference that the Council felt that his service was required for the purpose of proper and regular functioning of the Council. Nothing is there that the Council was ever dis-satisfied with the services rendered by him. As stated, his service book is also maintained. Therefore, keeping

him on fixed pay basis for his whole career without any regularisation will otherwise result in exploitation. According to us, for above said reasons and factors as discussed above, merely for the reason that said post of Project Officer is required to be filled up by direct recruitment as per the recruitment rules, his claim for regularisation should not be negated.

[13] The discussions as made in the foregoing paragraphs also lead us to take note of Rule 6 of Recruitment Rules for the post of Project Officer, TSCST as framed under Article 309 of the Constitution by the State of Tripura which makes an avenue for relaxation of any provision of such recruitment rules with respect to any class or category of person. Rule 6 is excerpted hereunder:

"6. Power to relax:

Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons."

[14] In view of the total background of the case and our discussion on the foregoing Paragraph-13 above, we are also of the view that this is an appropriate case for invoking the provisions of Rule 6 of said Recruitment Rules of TSCST by the State Government for regularisation of the present petitioner by relaxing the provision of the Rules.

[15] In view of above said discussions, we do not find any infirmity in the impugned judgment to be interfered with and accordingly, the appeal is dismissed being devoid of merit. However, it is clarified that the period of 03 [three] months for compliance of the direction of learned Writ Court to complete the process of regularisation and absorption of the writ petitioner to the post of Project Officer, shall be reckoned from the date of receipt of copy of this order. Other directions of the learned Writ Court remain unchanged.

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

JUDGE

CHIEF JUSTICE



SUJAY GHOSH Digitally signed by SUJAY GHOSH
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