

**HIGH COURT OF TRIPURA
AGARTALA**

WP(c) No.681 of 2023

1. Tripurna Joy Tripura (38 years),

S/o- Rupajoy Tripura,
R/o- Binoy Kumar Roaja Para,
Chhamanu, Dhalai Tripura.

2. Dhananjay Reang (43 years),

S/o- Bai Thang Rai Reang,
R/o- Manaiksha Para, Salthang Manu,
Santir Bazar, Bogafa, South 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,

Ekalavya Model Residential School, Kumarghat, North Tripura, PIN-
799264.

4. The Principal,

Ekalavya Model Residential School, Birchandra Nagar, Santirbazar,
South Tripura, PIN- 799144.

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

For the Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate. Mr. K. Nath, Advocate.
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For the Respondent(s)	:	Mr. M. Debbarma, Addl. G.A.
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Date of hearing and delivery : **24th January, 2025.**
of Judgment & Order

Whether fit for reporting : **YES.**

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (Oral)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel and Mr. K. Nath, learned counsel appearing for the petitioners. Also heard Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents-State.

2. It is the case of the petitioners that the petitioner No.1 was engaged as a casual worker from 14.09.2005 to 18.03.2010 at Residential School, Kumarghat, North Tripura under Tripura Tribal Welfare Residential Educational Institutions Society [in short, TTWREIS] under the respondent Nos.2, 3 and 4. Similarly, petitioner No.2 was engaged as a casual worker in the Residential School, Birchandra Nagar, Santirbazar, South Tripura under TTWREIS from 27.09.2005 to 18.03.2010. Thereafter, vide memorandum dated 15.02.2010 issued by respondent No.2 (Annexure-3 to the writ petition), offer of appointment to the post of Group-D on fixed pay basis were issued to certain persons and both the petitioners, along with 10(ten) other persons were also offered appointments to the post of Group-D as DRW (Daily Rated Worker) basis.

3. Accordingly, as per the memorandum dated 09.03.2010 (Annexure-4 to the writ petition), petitioner No.1 joined as a DRW on 18.03.2010 and petitioner No.2 joined as DRW on 17.03.2010. Along with them two other casual workers, namely, one Sri Upendra Tripura

and Sri Senchandra Tripura also joined as DRWs on 17.03.2010 and 18.03.2010 respectively.

4. Meanwhile, according to Mr. Barman, learned senior counsel keeping in view of the directions issued by the Hon'ble Supreme Court of India in a case in between **Secretary, State of Karnataka and Others versus Umadevi (3) and Others** reported in **(2006) 4 SCC 1**, the State Government issued two notifications regarding the regularisation of such DRWs/casual workers/contingent workers upon completion of their 10(ten) years of service, vide memorandum dated 01.09.2008 and 21.01.2009 and another notification dated 03.01.2014 (Annexure-8, 9 and 10 respectively) for the regularisation of such DRWs and casual workers on completion of their 10(ten) years of service. Thereafter, vide memorandum dated 31.07.2018 (Annexure-11 to the writ petition), the State Government withdrew the said scheme of regularisation by way of repealing the above-mentioned two notifications dated 01.09.2008 and 21.01.2009 along with other related notifications. Learned senior counsel also contends that if the initial engagement as casual worker is taken into account, then before such withdrawal of said scheme by the State Government, both the petitioners and said Sri Upendra Tripura, Sri Senchandra Tripura and some others had completed their 10(ten) years of services as both casual worker and DRW, however, their services were not regularized, notwithstanding the fact that they were all engaged against vacant Group-D post on a DRW basis.

5. Thereafter, said Sri Upendra Tripura and Sri Senchandra Tripura filed WP(C) No.860 of 2021 before this Court praying for

regularisation of their services as Group-D employee and a coordinate bench of this Court vide judgment dated 15.03.2022 (Annexure-15 to the writ petition) 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 regularisation 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 regularisation, 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 regularisation 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 regularisation 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."

6. Challenging the said judgment the respondents preferred WA No.153 of 2022, which was dismissed by the Division Bench of this Court vide judgment dated 12.12.2022, *inter-alia*, with the following observations :

"We have perused the entire records. It is an admitted position that the petitioners were first appointed in the year 2007 as Casual Worker, and in the year 2010 they were appointed/engaged as DRW. The schemes for regularization were made applicable for both Casual/Contingent/Daily Rated Workers and not only for Daily Rated Workers. The service rendered by the petitioners cannot be separated from services as Daily Rated Worker (DRW). The period the petitioners served as Casual Workers, under the scheme, must be accounted to the period of service of the petitioners as DRWs. Be that as it may, the petitioners have completed 10 years of service in the year 2017 and as such, they come within the purview of the schemes for regularization formulated by the Government of Tripura before the schemes were repealed in the year 2018. In other words, the petitioners completed 10 years of service during the existence of those schemes for regularization.

We do not find any ground to interfere with the judgment and order passed by the learned Single Judge. The judgment and order passed by the learned Single Judge are affirmed and upheld. Accordingly, the appeal stands dismissed. The respondents are directed to complete the entire process of regularization of the petitioners within a period of 3 (three) months from the date the petitioners shall furnish a copy of this order to the appellant-State respondents."

7. Against the said judgment of the Division Bench, the respondents then preferred a Special Leave Petition(Civil) Diary No(S).20762 of 2023 and the Hon'ble Supreme Court vide order dated 04.09.2023 (Annexure-17 to the writ petition) dismissed the same.

8. Learned senior counsel also submits that one, Ananta Reang, standing on the same footing also filed WP(C) No.737 of 2020 and vide judgment dated 10.05.2022, similarly one coordinate bench of this Court allowed the 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."

9. According to the learned senior counsel, all the above-said three persons have already been regularised in their service after the judicial pronouncements. Learned senior counsel also refers to the Note No.23, initiated from the office of respondent No.2, wherein Department noted that 11 Nos. of DRW staffs were appointed in the month of March, 2010 against the posts created with the concurrence of the Finance Department, Government of Tripura to utilise their services at different schools run by TTWREIS. He further submits that among the said 11

Nos. of DRWs, two are the present petitioners, along with said Sri Ananta Reang, Sri Upendra Tripura and Sri Senchandra Tripura. Therefore, it is quite clear that they were appointed against the vacant sanctioned posts.

10. Learned senior counsel also refers to Note No.19 initiated from the office of respondent No.2 and as submitted by the respondents, wherein the matter was processed for the regularisation of both the present petitioners with 9(nine) other persons including said Sri Ananta Reang, Sri Upendra Tripura and Sri Senchandra Tripura. The Department itself was of the view that the services of the petitioners should be regularised. For useful reference entire Note No.19 is reproduced herein below :

Note No.19

Sub : Proposal for regularization of 11 nos. of DRW staff-reg.

11(eleven) nos. DRW staff of TTWREIS have completed 10(ten) years of continuous service during the month of March, 2020 and are presently working in different schools under TTWREIS w.e.f. March, 2010.

2. They were recruited under Tripura Tribal Welfare Residential Educational Institutions Society (TTWREIS) against the created posts with prior concurrence from the Finance Deptt., Govt. of Triura vide U.O. No.1438/Fin(G)/08 dated 16.12.2008 and Memo No.F.1-496/TW/Estt.(Vol-1)/2007.3077-80 dated 14.01.2009 (copy of Page-60).

3. In this connection, it is to mention here that, after completion of 10(ten) years of continuous service as on March, 2020 in the post of DRW, the following staff are eligible for regularization of their services Finance Department Memos vide No.F.10(2)-Fin(G)/2008(Part) dated 21st January, 2009 (copy vide at Page-63) & No.F.10(12)-FIN(G)/2007(Part-1) dated 7th November, 2012 (copy vide at Page-64).

Sl. No.	Name of the DRW staff/employee	Presently Post held	DRW w.e.f.	Presently working at
1.	Sri Tripurna Joy Tripura	Cook-Cum-Masalchi	18/03/2010(F/N)	BMRS, KGT
2.	Smt. Kumari Reang	Cleaner	18/03/2010(F/N)	RMMAS, KCP
3.	Sri Dhananjoy Reang	Watchman	17/03/2010(F/N)	BMRS, BCN
4.	Sri Ananta Reang	Cook-Cum-Masalchi	18/03/2010(F/N)	RMMAS, KCP
5.	Sri Ajit Debbarma	Cook-Cum-Masalchi	18/03/2010(F/N)	RMMAS, ABS
6.	Sri Abadhan Tripura	Watchman	17/03/2010(F/N)	RS, Bhuratali
7.	Smt. Danabi Chakma	Cleaner	18/03/2010(F/N)	AS, Karbook
8.	Sri Draw Kr. Reang	Watchman	18/03/2010(F/N)	AS, Karbook
9.	Sri Upendra Tripura	Cook-Cum-Masalchi	17/03/2010(F/N)	BNRS, BCN
10.	Sri Senchandra Tripura	Watchman	18/03/2010(F/N)	RS, Bhuratali
11.	Smt. Sebika Tripura	Cleaner	17/03/2010(F/N)	RS, Bhuratali

4. In this regard, it is stated here that, a joint representation (vide at Page-59) has been received from these 11(eleven) nos. of DRW staff for regularization of their services on sympathetically and humanitarian ground.

5. Presently, these 11(eleven) no. DRW staffs of TTWREIS have completed their 10(ten) years of continuous service are being paid at par with there revised rate of wages @ Rs.230 per day w.e.f.1st October, 2018 as amended by the State Finance Deptt. Issued vide Memo No.7(2)-FIN(PC)/2018 dated 6th November, 2018 (copy at flag-'A').

6. The requirement of Cook-cum-Masalchi, Watchman & Cleaner for Residential School(s) are utmost essential for smooth functioning of the schools as they play vital role to maintain proper hygiene and nutrition in and around hostels and schools.

7. In view of the above, the matter is no placed before the authority for regularization of 11(eleven) nos. DRW staff as they completed their 10(ten) years of continuous service as on March, 2020, if approved.

8. The initial Scale of Pay of Group-D staff for the posts of Cook-cum-Masalchi, Watchman & Cleaner as per Tripura State Pay Matrix 2018 is Rs.4,840/- 13000/- GP-1,400/-, PB-1, Cell-1, Level-1, Entry Pay-Rs.16,000/-(copy at flag-'B') and 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 :

(In Rupees)

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/-

11. According to the learned senior counsel, the withdrawal of the policy decision for regularisation in the year 2018 will not affect the right of the present petitioners for regularisation, as they were engaged against the vacant Group-D posts and moreover, in similar situation said Sri Upendra Tripura, Sri Senchandra Tripura and Sri Ananta Reang have already been regularised. Finally, learned senior counsel urges for the regularisation of present two petitioners on the ground that their cases also stand on the same footing like above said persons.

12. Mr. M. Debbarma, learned Addl. G.A. submits that the concerned Department TTWREIS was initially of the view that the services of present petitioners should be regularised and accordingly, they had initiated the proposal for the same and sought opinion of the Finance Department, Government of Tripura but the Finance Department gave the opinion that the Department was to follow the extant Rules of the State Government on the proposed matter vide their Note No.24 dated 09.07.2021 and as during that period already the

notification of 2018, dated 31.07.2018 was the latest instruction from the Government, therefore, following the same the claims of the petitioners were rejected. Learned Addl. G.A. on that ground submits that as the scheme of regularisation is not in force, the writ petition deserves dismissal.

13. This Court has given due consideration to both the rival contentions. It is admitted position that after the judgment passed by this Court in WP(C) No.860 of 2021, directing the regularisation of services of Sri Upendra Tripura and Sri Senchandra Tripura, the matter was challenged before the Division Bench of this Court and then before the Hon'ble Supreme Court of India and the matter was finally set at rest and became binding upon the respondents. In compliance with said direction, both said Sri Upendra Tripura and Sri Senchandra Tripura were also regularised in their services. Similarly, service of another writ petitioner, namely, Sri Ananta Reang was also regularised following the judgment passed by this Court in WP(C) No.737 of 2020, as admitted by both parties.

14. In WA No.153 of 2022, the Division Bench of this Court, as indicated above, also observed that the services rendered by the petitioners of said case as casual workers could not be separated from their services as DRWs. Therefore, the period of petitioners service as casual workers must be counted as part of their service for the purpose of regularisation. In the present case, if the service rendered by both petitioners as casual workers is counted, they completed their 10(ten)

years of service before said scheme of regularisation was withdrawn by the State Government in the year 2018.

15. From the appointment letter dated 16.03.2010 (Annexure-5 to the writ petition), it appears that petitioner No.1 was appointed to the post of Group-D against the post of Cook-Cum-Masalchi on DRW basis, and similarly, petitioner No.2 was issued the appointment letter dated 16.03.2010 (Annexure-6 to the writ petition), appointing him to the post of Group-D against the post of Watchman on DRW basis. From the above-mentioned Note No.19 of the office of respondent No.2, as submitted by the respondents and also from the memorandum dated 15.02.2010 of respondent No.2 (Annexure-3 to the writ petition), it appears that said Sri Upendra Tripura, Sri Senchandra Tripura, Sri Ananta Reang and some others were appointed as Group-D on a DRW basis, along with present petitioners vide the said memorandum. When other three persons have already been regularised in their services after such judicial pronouncements and the matter being finally decided by the Hon'ble Apex Court, there is no reason to deny such benefit to the present petitioners. The petitioners should not be deprived from such benefit of regularisation in service.

16. In view of above, the writ petition is allowed. The respondents are directed to consider the regularisation of the petitioners to the posts of Cook-Cum-Masalchi/Watchman on completing their 10(ten) years of service as DRWs. However, before such regularisation, 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 regularisation 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.

JUDGE



**SATABDI
DUTTA** Digitally signed by
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