

IN THE HIGH COURT OF TRIPURA
AGARTALA

WP(C)16 OF 2012

Smt. Ali Rani Deb,
daughter of late Anil Chandra Deb
wife of Sri Gopal Das
resident of Village Gopal Nagar
P.O. Kalyanpur, P.S. Kalyanpur,
District : West Tripura

..... Petitioner

- Vs -

1. The State of Tripura,
represented by the Secretary-
cum Commissioner, Department of
Rural Development, Govt. of Tripura,
P.O. Kunjaban, District : West Tripura
 2. The Director,
Department of Rural Development,
Govt. of Tripura, P.O. Kunjaban,
District : West Tripura
 3. The District Magistrate & Collector,
West Tripura District,
Govt. of Tripura, P.O. Agartala,
P.S. West Agartala, District : West Tripura
 4. The Block Development Officer,
Kalyanpur Rural Development Block,
P.O. Kalyanpur, P.S. Kalyanpur,
District : West Tripura
 5. The State of Tripura,
Secretary cum Commissioner,
Finance Department,
Govt. of Tripura, P.O. Kunjaban,
District : West Tripura
 6. Sri Tapan Ch. Dey,
son of late Birendra Dey
resident of Netaji Nagar
P.O. & P.S. Teliamura
District : West Tripura
- Respondents

B E F O R E

THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. A. Bhowmik, Advocate

For the respondents : Mr. G.S. Bhattacharjee, Advocate

Date of hearing,
judgment & order : 17.09.2015

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER (Oral)

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner as well as Mr. G.S. Bhattacharjee, learned state counsel for the respondents.

[2] By means of this writ petition, the petitioner has questioned the action of the respondents, denying her regularization of service in terms of the memorandum dated 22.02.2007 under No. F. 10(2)-FIN(G)/2005 which was later on expanded and marginally modified by the memoranda dated 01.09.2008 and 21.01.2009.

[3] The crux of that memorandum is that the Government has taken a policy decision to regularize services of full-time DRWs/Casual/Contingent workers immediately after completion of 10 years of service. There is no dispute that the petitioner was initially engaged on 01.04.1999 as a casual worker for carrying water in the office premises. Since then the petitioner has been

discharging her duties without any blemish. Even the respondents were satisfied with performance that the petitioner delivered in terms of the said engagement.

[4] The petitioner when was not regularized, made several representations to the competent authorities, but without any yield whatsoever. As a result, she has filed this writ petition. The petitioner has also illustrated the incident of regularisation of one Sri. Tapan Ch. Dey. According to the petitioner, that person was similarly circumstanced like the petitioner. But, such illustration did not impact the respondents for reviewing their decision.

[5] Mr. A. Bhowmik, learned counsel appearing for the petitioner has succinctly submitted that non-consideration of the petitioner for regularisation as the Grade-D employee is entirely arbitrary and colourable exercise of the executive power. To strengthen his submission he has referred to a communication dated 02.07.2009 of the Block Development Officer, Kalyanpur, R.D. Block, West Tripura addressed to the District Magistrate and Collector, West Tripura, Agartala. By the said communication dated 02.07.2009, the Block Development Officer, Kalyanpur, R.D. Block, West Tripura provided the detailed particulars of the petitioner and another Tapash Ch. Dey. In the said communication it has been provided that the petitioner is a casual worker performing the duties of the Grade-D employee on full-time basis and she was receiving a sum of Rs.1,777/-. From the said office it surfaced

clearly that the petitioner was a casual worker and was covered by the memorandum dated 21.01.2009 read with the memoranda dated 22.02.2007 and 01.09.2008.

[6] Mr. G.S. Bhattacharjee, learned state counsel appearing for the respondents, has submitted that both the communication dated 02.07.2009, Annexure P-5 to the writ petition and the memorandum dated 12.11.2009, Annexure R/1 to the counter-affidavit filed by the respondents No.1 to 5, are stuffed with incorrect information about the petitioner. Truly, the petitioner is a part-time worker and she used to work for 4 hours. On consideration of the nature of job, she has been paid much less wage in comparison to the casual Group -D employees. To support his contention, Mr. Bhattacharjee, learned counsel has referred to the acquittance roll, signing on which the petitioner and other persons used to draw their wages. From the acquittance roll, Mr. Bhattacharjee, learned counsel has laboured to show that the petitioner was working part-time in the Kalyanpur, R.D. Block . He has also referred to a communication dated 11.09.2015, which has mentioned that :

"She is still working as casual worker(4 hour from 8.00 AM to 12.00 Noon) and the salary bill is been prepared as Part Time Worker(4 hour). Latest Pay Bill, aquittance and the order of Enhancement of wages from Finance Depdt. No. F.34(2)-FIN(G)/2006 dated 1105/2009 & F.4(16)()PC)/88, Dated:- 16/07/2015 is enclosed herewith "

[7] The said communication dated 11.09.2015 has been issued after this court passed the last order dated 04.09.2015. Mr. Bhattacharjee, learned counsel has also submitted that since the petitioner was a part time employee, she is not covered by the Government policy borne in the memorandum dated 21.01.2009. The said policy is for the DRWs, Casual and Contingent workers who have completed 10 years of service in that capacity.

[8] Mr. Bhowmik, learned counsel appearing for the petitioner while refuting the submission made by Mr. Bhattacharjee learned state counsel in the rejoinder has placed reliance on the attendance register for the various periods. He has shown to this court that the petitioner used to sign twice in that attendance register like the other Group-D employees, such as Helper. It shows that the petitioner was giving the full time service as a casual worker where she was posted.

[9] Mr. Bhattacharjee, learned counsel however has stoutly stated that signing twice in the attendance register cannot mean anything definitely to project that the petitioner was a full time casual worker. Hence, according to Mr. Bhattacharjee, learned state counsel, the petitioner is not entitled to get the benefit under the scheme of regularisation vide the memorandum dated 21.01.2009 and other allied, policy declarations made by the Government of Tripura.

[10] This is a saga of a lowly paid casual worker. The petitioner was engaged on 01.04.1999 and she has been given extension of her services on observing her satisfactory performance at least there is no complaint against the petitioner in the counter affidavit filed by the respondents. Even it has been noticed by this court that the Block Development Officer, by the communication dated 02.07.2009 recommended the petitioner's name to the District Magistrate and Collector for regularisation. From the said communication dated 02.07.2009, it has surfaced that the petitioner was in the full time duty, even though she was a casual worker. What Mr. Bhattacharjee, learned state counsel has sought to highlight is that from a comparison of the wages per month it would be apparent that the petitioner was not in a full time service else she would have been given higher wage. In this regard it may be stated that denial of the appropriate wage to the petitioner will not take out the substance from her claim for regularisation. That apart, this court has come across some other communication which are very relevant to determine the legality of the course as adopted by the respondents. From the memorandum dated 12.11.2009, Annexure-R/1 to the counter affidavit filed by the respondents No.1 to 5, it appears that the name of the petitioner was recommended by the District Magistrate and Collector West Tripura, Agartala to the Joint Secretary, Government of Tripura Rural Development Department for regularisation with the following particulars :

Sl.	Name of	Categor	Group-	Date	Date of	SC /	Educa	Reference	Remarks
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No	worker	y of post	C or D	of Engag ement	Birth	ST Statu s	t-ional Qualfi c- ation	of FD's U O No & date	(Place of Posting)
11	Smti Ali Rani Deb	Cont. Sweeper	Group- D	1.4.19 99	1.1.196 9	UR	Madh yamik App	F. 10(22)FIN (G)/DR 2004, F.2(3)/DM/ W/Estt/Blo ck/Vol-III/ 2008/ 6084. 130 dt 17.11.200 4 (copy is enclosed)	Kalyanpu r

[11] By filing a rejoinder, the petitioner has contended that she worked for full time basis like the other regular Group-D employees and she is entitled to be considered for regularisation in terms of the Government policy for regularisation. With the rejoinder, the petitioner has enclosed the copies of the pages of attendance register. However, Mr. G.S. Bhattacharjee, learned state counsel has produced some of the original attendance register to show that the petitioner signed twice in the course of the day as a token of her attendance for discharging the duties. Thus, the respondents have not put up any denial to the claim of the petitioner that she had been performed her duties on both the parts of the day.

[12] From the communication under No. F.2(1) BDO/KLN/A.C/2004-05/2703-05 dated 25.09.2004, as made by the

Block Development Officer, Kalyanpur, R.D. Block, it can be gathered that ---

“With reference to the above subject, I would submit herewith the list of contingent worker who were engaged in Kalyanpur R.D. Block during the opening of new Block w.e.from 1.4.1999 with the verbal consent of the then D.M. & Collector, West Tripura. Their services is fully utilised from the beginning of the new Block. One water carrier and sweeper and another engaged for maintenance of account of different scheme of the block. Under the above circumstance stated above kindly confirm the rate of wages of contingent worker for payment of wages bill to them. An early reply is solicited for the purpose.”

The said communication dated 25.09.2004 clearly shows that the petitioner is a contingent worker and not the part time worker. The said factual aspect has been reiterated by the B.D.O. in his communication dated 21.07.2005, Annexure- R/AAA where he has stated that :

“The factual informations as desired are furnished as under.

That when this Kalyanpur R.D. Block is opened with inadequate and without Accounts knowing staff/Water carrier-cum-sweeper w.e.f. 1.4.1999. Sri Tapan Chandra Dey, and Smti Ali Rani Deb, was engaged as contingent worker for the aforesaid purposes with the verbal consent of the then D.M. & Collector, West Tripura, as per report from different sources and the fact of which was already brought to your kind notice vide this Office Letter No. F.2(1)-BDO/KLNP/AC/04-05/2703-05 dated 25.9.2004 (Copy enclosed for ready reference). In reply to your letter No. F.2(3)-DM/(W)/ESTT/BLOCK/VOL-III/ 2790-2811/97 dated 30.6.2004.

In view of above fact, I would request you kindly to consider for their recognition as contingent Worker/DRW/worker since they are very useful hand.”

[13] The said communication has categorically laid emphasis on the nature of the job the petitioner was entrusted with and the petitioner was discharging. It cannot be from a candid reading of the letter, inferred that the petitioner was merely Part Time Worker. However, this court cannot also disagree with the submission of Mr. G.S. Bhattacharjee, learned state counsel that the wage was not duly structured. As stated by Mr. Bhowmik, learned counsel appearing for the petitioner, that denial of the fair wage to someone cannot take his other rights, rather it shows that the petitioner was unfairly treated by the employer. However, Mr. Bhattacharjee has submitted that the petitioner's status is merely that of a Part Time Worker, in view of the communication made by the District Magistrate and Collector on 01.11.2014, Annexure R/EE of the additional affidavit filed by the respondents.

[14] In the ordinary course, this court does not set out an inquiry as to the correctness of the fact when the fact is disputed by the respondents in as much as the disputed facts are ordinarily to be determined on adduction of the detailed evidence and evaluation of the same. Even to find out the real state of affairs , an inquiry to the disputed facts to a limited extent is not entirely forbidden. On such inquiry it has appeared the base-level and controlling officers have consistently stated the petitioner to be a contingent employee for full time. Definitely, the petitioner like other contingent workers deserves security of her service after lending long 15 years of service at a stretch as the petitioner was

indisputably engaged on 01.04.1999. The basis that Mr. Bhattacharjee, learned counsel has shown to us is the wage bill but that cannot be the only basis for determining the nature of employment.

[15] In the course of appreciating the submission of learned counsel for the parties, this court has already observed that the controlling officer has archived history and nature of service that the petitioner was extending. According to those records, the petitioner was/is in the full-time employment and the controlling officer namely BDO himself has recognised that status. In this backdrop the respondents can not adopt a hyper-technical approach to deny the petitioner's regularisation in terms of the said Government policy.

[16] Having held so, the respondents are directed to treat the petitioner as the full time contingent worker with effect from 01.04.1999 and regularise her service as the Group D employee in terms of the memorandum dated 21.01.2009 and others allied policy declaration made through the Department of Finance, Government of Tripura within a period of 3(three) months from today.

It is expected that on considering the long tenure of service the petitioner has served, all concerned authorities shall expedite the matter so that a human face is brightened up by their action.

[17] Accordingly this writ petition stands allowed to the extent as indicated above. There shall be no order as to the costs.

This court would place on record appreciation for Mr. G.S. Bhattacharjee, learned state counsel as he has ably assisted this Court in determining this writ petition.

JUDGE

Sabyasachi B