

IN THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 505 of 2011

1. Sri Pradipta Kumar Goswami,
son of Sri Prabodhananda Goswami,
presently posted as MRCBC,
office of the Dy. General Manager,
Jirania Electrical Division, Jirania, West Tripura,
resident of village : Ujan Abhoynagar,
P.O. Abhoynagar, P.S. East Agartala,
District- West Tripura
2. Smti. Ruma Roy,
wife of Sri Nihar Ranjan Das,
presently posted as MRCBC,
office of the Sr. Manager,
Electrical Sub-Division, Bamutia, Kalibazar,
under Deputy General Manager,
Mohanpur Electrical Division, Mohanpur, West Tripura,
resident of village : Krishnanagar P.O. Agartala,
P.S. West Agartala, District : West Tripura
3. Smti. Gouri Gupta,
wife of Sri Utpal Tarafdar,
presently posted as MRCBC,
office of the Sr. Manager, Electrical Sub-division,
Durjoynagar, under Dy. General Manager,
Capital Complex Electrical Division, Agartala,
resident of village : Milan Sangha, Uttar Badharghat,
P.O. A.D Nagar, District : West Tripura
4. Sri Manoj Kumar Laskar,
son of late Subal Ch. Laskar,
presently posted as MRCBC,
office of the Sr. Manager,
Communication Sub-Division, under Dy. General Manager,
Testing & Communication Division, 79 tilla, Agartala,
resident of Village : Joynagar Road No.9,
P.O. Agartala, P.S. West Agartala, District : West Tripura
5. Sri Raju Saha,
son of Sri Sunil Ch. Saha,
presently posted as MRCBC,
office of the Sr. Manager,
Electrical Sub Division, Bamutia, Kalibazar,
under Deputy General Manager,

Mohanpur Electrical Division, Mohanpur, West Tripura,
resident of village : Jogendranagar, Vidyasagar Chowmohani,
P.O. Jogendranagar, P.S. East Agartala, District : West Tripura

6. Sri Swapan Sarkar,
son of Sri late Jagadish Ch. Sarkar,
presently posted as MRCBC,
office of the Sr. Manager, Electrical Sub-division, Boxanagar
under Dy. General Manager, Electrical Division No. XI,
Rabindranagar, Sonamura, resident of Village : K.C. Para,
P.O. Santirbazar, P.S. Santibazar, District : South Tripura

..... **Petitioners**

- V e r s u s -

1. The Government of Tripura,
represented by the Secretary,
Department of Power, New Secretariat Complex,
Khejur Bagar, P.O. Kunjaban, P.S. East Agartala,
District : West Tripura
2. The Principal Secretary,
Department of Finance,
New Secretariat Complex, Khejur Bagan,
P.O. Kunjaban, P.S. East Agartala,
District : West Tripura
3. The Tripura State Electricity Corporation Limited,
(A Govt. of Tripura Enterprise),
represented by the Chairman-cum-Managing Director,
Tripura State Electricity Corporation Limited,
Tripura, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District : West Tripura
4. The Chairman-cum-Managing Director,
Tripura State Electricity Corporation Limited,
(A Govt. of Tripura Enterprise)
Tripura, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District : West Tripura

..... **Respondents**

**BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA**

For the petitioners	:	Mr. T.K. Choudhury, Advocate.
For the respondents	:	Mr. T.D. Majumder, Advocate Mr. B. Dutta, Advocate

Date of hearing and : 29.06.2015
 delivery of judgment & order

Whether it is fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. T.K. Choudhury, learned counsel appearing for the petitioners and Mr. T.D. Majumder, learned counsel appearing for the Tripura State Electricity Corporation Ltd. and its Chairman-cum-Managing Director, the respondents No. 3 and 4 as well as Mr. B. Dutta, learned counsel appearing for the respondents No. 1 and 2.

[2] The grievance of the petitioners is that the petitioners have not been brought in the regular establishment w.e.f. 01.07.2008, in terms of Memorandum No.F.10(2)-FIN(G)/2008(part)/275, dated 09.06.2009, Annexure-1 to the writ petition, even though they had been given offer of appointment on 27.12.2010 for such purpose, as would be apparent from the appointment order dated 02.04.2001, Annexure-5 to the writ petition. As a result, they have been reeling under unabated financial jeopardy. By this petition, the petitioners have also challenged the appointment order No. F.6(151)-TSECL/05/P-2/9392-532 dated 02.04.2011, Annexure-5 to the writ petition.

[3] The undisputed fact is that the names of the petitioners are figuring in the memorandum dated 09.06.2009 alongside 164 other Contingent/DRWs engaged on full time basis. There is no dispute that in terms of the memorandum dated 09.06.2009, Annexure-1 to the writ petition, all the petitioners are entitled to be regularized w.e.f. 01.07.2008. Thus, the petitioners were given the offers of appointment on 27.12.2010, Annexure-4 to the writ petition.

[4] Pursuant to those offers of appointment dated 27.12.2010, their posting were given by the purported appointment order dated 02.04.2011 where it has been provided that – ‘the aforesaid regularization will be effective from the date of joining to the post on the regular basis. They should join at the respective places of posting by 11th April, 2011’. Such abrupt change in the effective day of regularization has found its root in the communication dated 01.04.2011, Annexure-I to the writ petition, which has given rise to the cause for filing this writ petition. For reference, the communication dated 01.04.2011 is reproduced hereunder :

“I am directed to refer Memo No.F.3(2)FIN(G)/2008/P/275 dated 19th June, 2009 of Finance Department, Government of Tripura communicating approval for regularization of DRWs/Casual/Contingent workers engaged on full time basis by erstwhile Power Department (now TSECL) and to say that Government has decided to regularize the DRWs/Casual/Contingent workers of TSECL from the date of joining to the post on regular basis.

2. This is in modification of date of effect of regularization issued by Finance Department under aforesaid Memo and issued with the approval of Council of Ministers vide Item No. 9 in its meeting held on 31st March, 2011."

[5] Mr. T.K. Choudhury, learned counsel appearing for the petitioners has submitted that the said communication dated 01.04.2011 is entirely unsustainable, inasmuch as this communication comes in conflict with the memorandum dated 09.06.2009. Apart that, the person who has issued the said communication has no authority to make such change. He has succinctly submitted that all the petitioners since were eligible under the memorandum dated 09.06.2009, they are all entitled to be brought under the regular establishment with effect from 01.07.2008. He has fervently urged this Court, to direct the respondent-Corporation to release all the financial benefits accordingly.

[6] From the other side, Mr. T.D. Majumder, learned counsel appearing for the Corporation, has submitted that the Corporation is wading through the serious financial situation and as such even though the petitioners, in view of the memorandum dated 09.06.2009 were entitled to be brought under the regular establishment w.e.f. 01.07.2008, they were not in a position to bear the burden of additional financial requirement for defraying the arrear pay and allowances. Accordingly, for financial assistance, they had approached the

Govt. of Tripura in the Power Department. In turn, the Power Department had processed the proposal to the Finance Department, Government of Tripura, which had regretted such financial assistance. At the instance of the Power Department, the matter was placed before the Council of Ministers for finding out an effective resolution. The Council of Ministers in its meeting dated 31.03.2011 has resolved as under:

Item No.9 : Fixing date of effect of financial benefit to the DRWs/ Casual/ Contingent workers of TSECL by notional fixation from the date of order of regularization under power Department. (Power Deptt. File No.F.1(17)/POWER/2007/P-I/2289 dated 30.03.11).

Proposal of the Department at para-5 of the cabinet memorandum is approved."

[7] For purpose of understanding the decision of the Council of Ministers, the proposal of the Power Department as reflected in the Memorandum for Council of Ministers dated 30.03.2011 (Annexure-R/3 to the supplementary affidavit filed by the Corporation-respondents on 29.06.2015), is extracted as a whole :

MEMORANDUM FOR COUNCIL OF MINISTERS.

Subject :- Fixing date of effect of financial benefit to the DRWs/Causal/ Contingent workers of TSECL by notional fixation from the date of order of regularization.

**Finance Department, Government of Tripura
vide its Memo No.F.3(2)FIN(G)/2008/P/275**

dated 19th June, 2009 communicated approval for regularization of DRWs/ Casual/ Contingent workers engaged on full time basis by erstwhile Power Department (now TSECL). The memorandum contains the details of name of 943 workers in 5(five) Annexures with different dates of effect of regularization, which is as follows :

<u>Annexure</u>	<u>No. of Workers</u>	<u>Date of effect of regularization</u>
1	57	01.02.2006
2	286	01.01.2007
3	228	01.12.2007
4	164	01.07.2008
5	<u>208</u>	31.03.2008
	943	

2. Government of Tripura has decided that all these DRWs/Casual/Contingent workers will be regularized by Tripura State Electricity Corporation Limited (TSECL). Accordingly, TSECL has made verification of age, educational qualification and other criteria as per relevant recruitment rules and found 646 (six hundred forty six) candidates eligible for regularization with different date of effect as given by Finance Department as follows:-

DATE OF EFFECT OF REGULARIZATION						
	01.02.2006	01.01.2007	01.12.2007	01.07.2008	31.03.2008	Total
Group-C	12	62	50	36	45	205
Group-D	27	133	107	77	97	441
Total	39	195	157	113	142	646

3. Out of 646 persons, TSECL has recently issued offer of appointment on regular basis to 388 persons in total, comprising of 240 workers to the post of Helper Gr-II, 13 workers to the post of Junior Operator and 135 workers to the post of MRCBC for the first phase. There joining will be accepted based on their accepting the offer.

4. Total financial additional implication for regularization of aforesaid workers is Rs.3.97 crores per annum. If regularization is to be made as per date of effect given by the Finance

Department, arrear payment of Rs.8.50 crores will be involved. TSECL is willing to bear the responsibility for future financial liabilities consequent to regularization but has expressed inability to bear the burden of arrear payment. A proposal was moved to Finance Department for sanction of arrears to aforesaid workers, but Finance Department regretted the proposal due to financial constraints vide U.O. No.965-FIN(B)/2010 dated 31.01.2001.

5. Keeping in view the above, approval of Council of Ministers is sought for regularization of DRWs in TSECL from the date of their joining, in modification of the dates mentioned in para 1 of this memo, with prospective effect and subject to the condition that no arrear payment will be made owing to financial constraints on the part of TSECL.

6. Hon'ble Chief Minister has given his consent to place the matter before the Council of Ministers.

**Sd/- illegible
30/3
(MANISH KUMAR)
Secretary, Power
Government of Tripura.**

[8] From the para 5 of the proposal, it clearly transpires, as Mr. T.D. Majumder, learned counsel for the Corporation has indicated that the proposal was to give the regularization from a prospective date to avoid the arrear payment. But, there is no specific proposal whether the very date as indicated in the memorandum dated 09.06.2009 would be modified or not. The purpose of this proposal was to get rid of the arrear payment to the persons who were entitled to be regularized w.e.f. 01.07.2008 or from some other anterior or posterior day, the

said proposal has been accepted by the Council of Ministers. However, formal notification in this regard is yet to be issued.

[9] Mr. B. Dutta, learned counsel appearing for the respondents No. 2 and 3, has also supported the plea raised by Mr. T.D. Majumder, learned counsel appearing for the Corporation and he has produced the original file from where that proposal was initiated.

[10] This is really unfortunate that the persons who are working in the Corporation and who have worked in the Power Department for a considerable long term, will not be getting the benefit of the memorandum dated 09.06.2009 as the necessary fund is not available with the Corporation. It has not been disputed by the respondents that this memorandum has been implemented in the other Departments, effectively bringing the similarly situated persons on the regular establishment w.e.f. 01.07.2008. Since these unfortunate workers have been working in the Corporation, they are now at the mercy of the Corporation. From examination of the records so produced, this court also cannot disagree with the assessment that the corporation is reeling under serious crunch of fund and on financial matters this court cannot direct the Corporation to adopt any pay structure or regularisation if that is not possible within their means. But, the rigid attitude of the Corporation at the same time cannot be subscribed by this court. As a result,

the decision contained in the communication dated 01.04.2011 is interfered with, inasmuch as this is not consistent with the decision of the Council of Ministers at all and the respondents could not show any other basis of issuing such communication. What the Council of Ministers has decided in their meeting dated 31.03.2011 is that the financial benefit may not be given with effect from 01.07.2008, but from their date of regularization. There again emerges another issue. What would be the effective date of regularization? The Council of Ministers is silent over that aspect of the matter. If the memorandum dated 09.06.2009 and the decision of the Council of Ministers dated 31.03.2011 are read together, only interpretation that can possibly be gathered is that the petitioners will be regularized w.e.f. 01.07.2008, but they will not get the financial benefit from that date. It has not been denied by the respondents that the offer of appointment that was issued on 27.12.2010 has been accepted by all the petitioners, but under protest.

[11] It is expected that without raising any further reservation, the Tripura State Electricity Corporation Ltd. shall treat the day of issuing offers of appointment i.e. 27.12.2010 as the effective date of reporting of the petitioners in the regular post, even though their posting was given by the appointment order dated 02.04.2011, Annexure-5 to the writ petition.

[12] It is made further clear that on 01.07.2008 the pay of the petitioners shall be fixed in the scale of pay that has been denoted in the memorandum dated 27.12.2010, but the petitioners will not get the financial benefit till 26.12.2010. From 27.12.2010 they would get all the financial benefit as the regular employee of the Corporation. As a result, the Corporation has to defray the arrear pay and allowances of the petitioners for a period, somewhat of more than 3(three) months only. The said arrear shall be paid to the petitioners within 3(three) months from the day when the certified copy of this order shall be furnished by the petitioners to the respondent No.4, else the said amount shall carry interest @ 9% per annum till the payment is made.

[13] With this observation and direction, this petition stands disposed of. The supplementary affidavit filed by the respondent-Corporation shall be made part of the records.

There shall be no order as to costs.

JUDGE