

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

W.A. No.67 of 2014

- 1. The State of Tripura,**
(Through the Secretary,
Public Works Department,
Government of Tripura),
Agartala.
- 2. The Secretary,**
General Administration (P & T) Department,
Government of Tripura,
Agartala.
- 3. The Secretary,**
Scheduled Tribes Welfare Department,
Government of Tripura, Agartala.
- 4. The Secretary, Finance Department,**
Government of Tripura, Agartala.

..... **Appellants**

- V e r s u s -

- 1. Tribal Engineers' Society, Tripura,**
Head Office- Ramkrishna Nok
C/o. Er. Manoranjan Debbarma,
Near State Tribal Cultural Research Institute and Museum,
Suparibagan, Krishnanagar,
P.S. West Agartala.
District- West Tripura,

(A registered Society having its registration
No.4141 and represented by its Secretary).
- 2. Shri Nilikanti Chakma,**
S/o Sri Jatindra Chakma.
- 3. Shri Manoranjan Debbarma,**
S/o Sri Bahadur Debbarma.
- 4. Shri Rajendra Debbarma,**
S/o late Raj Mohan Debbarma.
- 5. Shri Biswajit Debbarma,**
S/o Late Jagat Mohan Debbarma.

- 6. Shri Sudhan Debbarma,**
S/o Sri Sushil Debbarma.
- 7. Shri Sambhu Debbarma,**
S/o Sri Mukunda Debbarma.
- 8. Smt. Tandra Debbarma,**
W/o Shri Purendu Debbarma.
- 9. Shri Ajit Debbarma,**
S/o Sri Girindra Debbarma.
- 10. Shri Ratan Chakma,**
S/o Late Suresh Chakma.
- 11. Shri Paramanik Jamatia,**
S/o Shri Nilkanta Jamatia.
- 12. Shri Surjya Kumar Debbarma,**
S/o Late Sasimohan Debbarma.
- 13. Shri Jayanta Debbarma,**
S/o Shri Jotish Chandra Debbarma.
- 14. Shri Rathindra Debbarma,**
S/o Shri Sunil Debbarma.
- 15. Shri Mati Lal Jamatia,**
S/o Shri Jagat Guru Jamatia.
- 16. Shri Anjan Debbarma,**
S/o Late Kanoj Debbarma.
- 17. Shri Tamal Chakma**
S/o Late Krishna Bandhu Chakma.
- 18. Shri Amar Kanti Debbarma.**
S/o Late B.K. Debbarma.
- 19. Shri Jatindra Jamatia,**
S/o Late Jaba Jamatia.
- 20. Shri Jogesh Chandra Jamatia,**
S/o Late Govinda Sundar Jamatia.
- 21. Shri Sukumal Chakma,**
S/o Shri Sushil Kumar Chakma.
- 22. Shri Aswani Kumar Debbarma,**
S/o Bimal Chandra Debbarma.

- 23. Shri Amulya Jamatia,**
S/o Shri Bhuban Kumar Jamatia.
- 24. Shri Parimal Debbarma,**
S/o Late Subal Chandra Debbarma.
- 25. Shri Sastam Basu Bharati Debbarma,**
S/o Late B.K. Debbarma.
- 26. Shri Bharat Chandra Jamatia,**
S/o Late Dhanimanik Jamaita.
- 27. Shri Sasilal Noatia,**
S/o Shri Biswahari Noatia.
- 28. Shri Sishir Chiran,**
S/o Late Bipin Chiran.
- 29. Shri Naresh Debbarma,**
S/o Shri Nakul Debbarma.
- 30. Shri Gulakta Jamatia,**
S/o Shri Prabir Kumar Jamatia.

All are C/o Tribal Engineers' Society,
Tripura, Head Office – Ramkrishna Nok
C/o. Er. Manoranjan Debbarma, Near
State Tribal Cultural Research Institute
and Museum, Suparibagan,
Krishnanagar, P.S. West Agartala, Dist.
West Tripura.

- 31. Tripura Public Service Commission**
Through its Secretary, Agartala.

..... Respondents

BEFORE
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR.JUSTICE S. TALAPATRA

For the appellants : Mr. B.C. Das, Advocate General
Mr. B. Banerji, Advocate

For the respondents No.1 to 30 : Mr. S.M. Chakraborty, Sr. Advocate
Ms. B. Das, Advocate

For the respondent No.31 : Mr. P. Dutta, Advocate

Date of hearing and delivery : **10.08.2015**
of judgment and order

Whether it is fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)**(Deepak Gupta, CJ)**

This writ appeal by the State is directed against the judgment dated 31.03.2014 delivered by a learned Single Judge of this Court in W.P.(C) No.301 of 2006.

[2] The undisputed facts are that vide order dated 9th November, 1992 a large number of Junior Engineers, both degree holders and diploma holders, working in the Public Works Department, were promoted on officiating basis as Assistant Engineers on ad-hoc basis for a period not exceeding 6(six) months. No regular promotions were made and the ad-hoc promotions continued. Finally, an order was passed on 14th July, 2006, whereby as many as 238 persons were promoted as Assistant Engineers on regular basis. However these promotions were made effective from the date of the order i.e. 14th July, 2006. Though 238 persons had been promoted by this order, only 29 persons of the said promotees formed a society, known as the Tribal Engineers' Society, Tripura and this society along with these 29 (twenty nine) individuals filed the writ petition praying that their promotion should be effected from 9th November, 1992 when they were initially promoted. The learned Single Judge held that though the ad-hoc service does not confer any right in the eyes of law, the original petitioners were entitled to this benefit since one other person namely, Kajal Banik (Engineer) was given benefit of ad-hoc service.

[3] In our opinion, this dispute is squarely covered by the judgment of the Apex Court in the **Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others**, reported in **AIR 1990 SC 1607**. In that case, the Apex Court dealt with the issue as to whether ad-hoc service rendered by an employee is to be counted while considering his service for all intents and purposes and if so, under what circumstances.

[4] We may refer to sub paras-A & B of Para-44 of the judgment which read as follows:

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.”

[5] The case of the State is that the writ petitioners were appointed dehors the rules. According to the State, the promotions were made in an ad-hoc fashion without following the rules. Even this situation is covered by sub para-B of Para-44 of the said decision of the Apex Court. According to the learned Advocate General, the case of the State is squarely covered by sub para-A of the said decision especially the corollary thereto since the promotion of the writ

petitioners on ad-hoc basis was made dehors the rules. Sub para-A of Para-44 clearly indicates that ad-hoc service is normally not to be counted for any purpose, especially when it is made against the rules. The corollary relied upon by the learned Advocate General only clarifies this issue by saying that where the initial appointment is only ad-hoc and the said appointment is not in accordance with the rules and further that the said appointment is a stop gap arrangement, the officiation in such post cannot be taken into account for considering his seniority.

[6] In our view, the present case does not follow under sub para-A for the following reasons:

(i) The ad-hoc appointment though not made according to the rules continued uninterrupted for 14 years till the services of the writ petitioners, the respondents herein, were regularized in the year 2006.

(ii) This was not a stop gap arrangement because there can be no stop gap arrangement which continues for 14 long years.

(iii) The explanation given by the State that it could not make regular appointment due to the pendency of the writ petition is a fallacious argument since the writ petition was filed in the year 2004 and there is not a word by the State as

to what prevented it from making regular appointment from 1992 till 2004.

Nothing has been placed on the file of this case to show that there was any stay order granted by any Court, whereby the State was prevented from making any regular appointment.

[7] We are clearly of the view that this case is covered by sub para-B of Para-44 of the aforesaid decision of the Apex Court which clearly lays down that even if the initial appointment is not made in accordance with the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. Therefore, the period of service rendered by the writ petitioners from 1992 till the regularization in 2006 will be counted for all intentional purposes.

In view of the above discussion, this appeal stands dismissed.

Before parting with the records, we may observe that we are limiting this benefit only to the persons, who have approached this Court and the persons who have not approached this Court will not be entitled to claim this benefit without obtaining orders from this Court.

JUDGE

CHIEF JUSTICE