

THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.139 of 2012

W.P.(C) No. 324 of 2012

In W.P.(C) No.139 of 2012

Petitioner:

Sri Dipak Saha,
son of late Rashbihari Saha,
North Banamalipur, Agartala,
P.O. Agartala, P.S. Agartala,
P.S. East Agartala, District-
West Tripura

By Advocate :

Mr. A.K. Bhowmik, Sr. Advocate
Mr. R. Dutta, Advocate

- V E R S U S -

Respondents:

- 1. The State of Tripura ,**
to be represented by the
Principal Secretary, Department
of Industries & Commerce &
Handloom, Handicrafts and
Sericulture, Government of
Tripura, New Secretariat
Complex, Agartala, P.O.
Lichubagan, P.S. East Agartala,
District West Tripura.
- 2. The Director,**
Department of Handloom,
Handicrafts and Sericulture,
Government of Tripura, Agartala,
P.O. Agartala, P.S. West
Agartala, District West Tripura.

By Advocate :

Mr. S. Chakraborty, Addl. G.A.

In W.P.(C) No.324 of 2012

Petitioner:

- 1. Smti. Joydipa Chakraborty,**
wife of Shri Dipak Saha, resident
of North Banamalipur, P.O.
Agartala, P.S. East Agartala
District- West Tripura, PIN-
799001
- 2. Smti. Rakhi Acharjee,**
wife of Shri Ashim Sengupta
resident of village- Purba
Dhwajanagar, P.O. Gakulpur,
district- Gomati, Tripura, PIN-
799114
- 3. Smti. Tandra Bhattacharjee,**
wife of Shri Sajal Chakraborty
resident of Kumri Tilla Government
Quarters Complex, No. Type-IV/7
P.O. Kunjaban, P.S. East Agartala
District- West Tripura, PIN-799006
- 4. Smti. Sutapa Chakraborti,**
wife of Dr. Prasun Chakraborty
resident of Ramnagar Road No.2 P.O.
Ramnagar, P.S. West Agartala
District- West Tripura, PIN-799002.

By Advocate :

Mr. S.M. Chakraborty, Sr. Advocate
Ms. D. Das, Advocate

-V E R S U S-

Respondents:

- 1. The State of Tripura,**
Through the Secretary to the
Government of Tripura Department
of Industries, New Secretariat,
Agartala-799006.
- 2. The Director,**
Handloom, Handicrafts and
Sericulture Pandit Nehru Complex,
Gorkhabasti Agartala-799006, West
Tripura

3. Smti. Sarbani Roy,
Wife of Dr. Pradip Mallik resident of
Vivekanandapur, Renters Colony
District- West Tripura, PIN-799004.

By Advocate :

Mr. S. Chakraborty, Addl. G.A.

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing : 02.12.2015
Date of delivery of
Judgment and order : **14.12.2015**

Whether fit for reporting : **No**

JUDGMENT & ORDER

As the common question of law is involved in these writ petitions those are clubbed together for disposal by a common judgment.

[2] By means of these writ petitions being W.P.(C) No.139 of 2012 and W.P.(C) No.324 of 2012, the petitioners have prayed that they shall be treated as appointed regularly in the post of Sericulture Development Officer w.e.f. 11.01.1993 and as the consequential relief the order under No.F.1.(5-38)/HR/DHHS/2000/P dated 07.05.2012, Annexure-10 to the writ petition being W.P.(C) No.139 of 2012, which is relevant for all the petitioners, be interfered with and appropriately modified.

[3] The facts are mostly admitted. The petitioners were appointed in the post of the Sericulture Development

Officer in the scale of pay of Rs.1450-3710/- on adhoc basis w.e.f. 11.01.1993 by the order dated 11.01.1993, Annexure-3 to the writ petition being W.P.(C)324 of 2012 and Annexure-4 to the writ petition being W.P.(C) No.139 of 2012. The petitioners were discharging all duties and responsibilities as the Sericulture Development Officer to the entire satisfaction of the competent authority. The petitioners were given higher pay scale after 10 and 17 years of service as per the CAS/ACP and they continued to get regular increments when those fell due. For shortage of vacancy, the petitioners were not regularised till 07.03.2012. By the order dated 07.03.2012, the petitioners were regularised. The said regularisation order is reproduced hereunder:

No.F.(5-35)HR/DHHS/2000/P/18,594-606
Government of Tripura
Department of Industries and Commerce
(Handloom, Handicrafts and Sericulture)
Agartala, 799006, Tripura

Dated, the 7th March, 2012

The following officials were appointed on *ad hoc basis temporarily* to the post of Sericulture Development Officer, in the *Direct Recruitment category*, in the pay scale of Rs.1,450-3,710/- with effect from 11th January, 1993 vide Order No.DHHS/ESTT/3(42)/91/489-73 dated 11th January, 1993:

Sl. No.	Name of Employee	Category	Date of appointment to the post
1	Smt. Joydipa Chakraborty	UR	11.01.1993
2	Smt. Rakhi Acharjee	UR	11.01.1993
3	Smt. Tandra Bhattacharjee	UR	11.01.1993
4	Shri Dipak Saha	UR	11.01.1993
5	Smt. Sutapa Chakraborty	UR	11.01.1993
6	Smt. Nupur Som	UR	11.01.1993
7	Shri Pradip Saha	UR	11.01.1993
8	Shri Alok Roy	UR	11.01.1993
9	Smt. Sarbani Roy	SC	11.01.1993

2. The appointments were made ad hoc basis temporarily since the same were without following provisions of any Recruitment Rules and the provisions of the Reservation Rules.

3. The matter has been under consideration of Government for regularisation of services of the aforesaid employees. Accordingly, after due consideration of the Recruitment Rules for the post of the Sericulture Development Officer, as amended from time to time (esp. with respect of Direct Recruitment Quota) and the Rules of Reservation and consequentially, the position of the availability of vacant posts in the Direct Recruitment category (for UR, SC and ST), the services of the aforementioned employees are hereby regularised with effect from the dates indicated against the names of the respective employees, as follows:

Sl. No.	Name of Employee	Category	Date of regularization
1	Smt. Joydipa Chakraborty	UR	31.07.2008
2	Smt. Rakhi Acharjee	UR	30.04.2009
3	Smt. Tandra Bhattacharjee	UR	30.09.2009
4	Shri Dipak Saha	UR	30.09.2009
5	Smt. Sutapa Chakraborty	UR	30.09.2009
6	Smt. Nupur Som	UR	30.09.2009
7	Shri Pradip Saha	UR	30.09.2009
8	Shri Alok Roy	UR	30.09.2009
9	Smt. Sarbani Roy	SC	30.09.2009

[4] By the said order reasons for such long delay for not regularising the services of the petitioners has been provided. According to the respondents, there was shortage of vacancies for the direct recruitment. As only 25% of the cadre strength of Sericulture Development Officer was early earmarked for direct recruitment in the recruitment rules. In the 2nd table, the date of regularisation has been provided. The petitioner No.1, namely Smt. Joydeepa Chakraborty, was regularised w.e.f. 31.07.2008, the petitioner No.2, namely Smt. Rekha Acharjee was regularised w.e.f. 30.04.2009, the petitioner No.3, namely Smt. Tandra Bhattacharji was regularised 30.09.2009 and the petitioner No.4, namely Smt. Sutapa Bhattacharji was regularised 30.09.2009 [in W.P.(C) No.324 of 2012] and the petitioner Sri Dipak Das was regularised w.e.f. 30.09.2009 [in W.P.(C) 139 of 2012].

[5] The petitioners have asserted that the petitioners were sponsored by the State for the Post Graduate Diploma training in sericulture in Central Research Training Institute, Mysore, Behrampore. The petitioners as the sponsored candidates and they were completed the said Post Graduate course on Sericulture and they were engaged by the order dated 11.01.1993. In the order dated 11.01.1993 issued by the Addl. Director, Handloom, Handicrafts and Sericulture Department, Government of Tripura following note is available:

"Sanction to the creation of post have been communicated under the scheme as mentioned against each in Col. No.4."

But the respondents did not regularise their services till they were regularised by the order dated 07.03.2012. One of the petitioners, namely Dipak Das, the petitioner in W.P.(C) 139 of 2012 approached this Court earlier by filing a writ petition being W.P.(C) NO.34 of 2011. The said writ petition was disposed of, by the order dated 09.09.2011 directing the Director, Handloom, Handicrafts and Sericulture Department, Government of Tripura to consider and dispose the representation submitted by the petitioners in accordance with law within a month's time. The respondents considered the said representation and disposed the same by the order dated 07.03.2012, Annexure-11 to the writ petitioner being W.P.(C) NO.139 of 2012. By the said order dated 07.03.2012, the respondents have given a brief history how the petitioners were appointed as the Sericulture Development Officer. Further the respondents have admitted that the Finance Department

approved creation of 14 posts of Extension Officer (Sericulture) and the creation of those 14 posts was duly notified by the memorandum dated 26.12.1992.

[6] Thereafter, those 14 posts of Extension Officer(Sericulture) created under the order dated 26.11.1992 was re-designated as Sericulture Development Officer in the same pay scale subject to condition that the posts shall be filled up by direct recruitment only from suitable candidates in terms of the recruitment rules. For purpose of such recruitment, there was proposal for amendment of the recruitment rules. The said re-designation resulted in a situation that there emerged two sets of posts namely, Farm Manager/Inspector (Sericulture) /Extension Officer (Sericulture) on the one hand and the Sericulture Development Officer in the identical pay scale, on the other hand. Thus, the existing recruitment rules appeared inadequate to govern the recruitment of the Sericulture Development Officer. As the petitioners were appointed on *ad-hoc* basis, according to the respondents, no reservation roster was followed. Even absence of the recruitment rules regular appointments could not be made. Out of 9(nine) persons appointed in the post of the Sericulture Development Officer including the petitioners 8(eight) were from UR category and one was from SC category. The said new arrangement generated resentment in the mind of the persons who were in the feeder post for promotion to the post of Farm Manager/

Inspector(Sericulture)/Extension Officer (Sericulture). They demanded quota out of 14(fourteen) newly created posts. Some of the aggrieved employees filed a writ petition being W.P.(C) No.155 of 1998 in the Gauhati High Court which then exercised its jurisdiction over the State of Tripura and in the said writ petition, by filing the counter affidavit, the respondents assured that due arrangement would be made providing the promotion quota. In terms of the said assurance, the recruitment rules were framed for 56(fifty six) posts clubbing the post of Extension Officer (Sericulture)/Farm Manager/Inspector (Sericulture) and Sericulture Development Officer. 25% posts were earmarked for direct recruitment and 75% posts were stated to be filled up by promotion. According to the respondents, 14(fourteen) direct recruitment posts were not adequate to adjust 14(fourteen) directly recruited officials who were already in position, to speak least of additional 9(nine) officials including the petitioner who were appointed on 1993 on *ad hoc* basis. All the posts of Extension Officer (Sericulture)/Farm Manager/Inspector (Sericulture) (42) in total were re-designated as the Sericulture Development Officers w.e.f. 11.01.1993 under the Order No.743/Fin(G)/2000 dated 19.10.2000. In the year 2002, the Department of Industries and Commerce proposed for creation of 9(nine) supernumerary posts for regularising the petitioners but the approval could was not received from the Finance Department.

[7] From Para-5 & 6 of the order dated 07.03.2012, the outline of the difficulty that is sought to be canvassed before this Court can be gathered. For purpose of reference, those passages are extracted hereunder:

5. As the records, the following 9 officials were appointed as Sericulture Development Officers on ad hoc basis temporarily vide Appointment Order No. DHHS/ESTT/3(42)/91/489-73 dated 11.01.1993:

Sl. No.	Name of Employee	Category	Date of appointment to the post
1	Smt. Joydipa Chakraborty	UR	11.01.1993
2	Smt. Rakhi Acharjee	UR	11.01.1993
3	Smt. Tandra Bhattacharjee	UR	11.01.1993
4	Shri Dipak Saha	UR	11.01.1993
5	Smt. Sutapa Chakraborty	UR	11.01.1993
6	Nupur Som	UR	11.01.1993
7	Shri Pradip Saha	UR	11.01.1993
8	Shri Alok Roy	UR	11.01.1993
9	Smt.Sarbani Roy	SC	11.01.1993

In the absence of any other information to the contrary, it has been assumed that the inter-se seniority of the above-mentioned officials is in the order in which their names have been listed in the Appointment Order. All the officials have the necessary qualifications for direct recruitment as per the RRs.

6. However, before the taking up the process of adjustment of ad hoc appointees against vacant posts, the regularly appointed officials need to adjust first. As 08.06.1999, there were 14 Direct Recruit officers in service (all UR), to be adjusted against vacant posts (UR-78, ST-4, SC-3). These officials are as follows:

Sl. No.	Name of Employee	Category	Date of appointment to the post
1	Shri Manash Chakraborty	UR	21.05.1975
2	Shri Swapan Chakraborty	UR	18.03.1975
3	Shri Pradip Dutta	UR	18.03.1975
4	Shri Samar Chakraborty	UR	12.02.1976
5	Shri Bhaskar Sengupta	UR	11.02.1976
6	Shri Abhijit Ghosh	UR	09.02.1976
7	Shri Pradyut Kanti Roy	UR	10.02.1976
8	Shri Ratan Lal Gupta	UR	08.02.1976
9	Shri Sudhir Chandra Das	UR	11.02.1976
10	Shri Ramendra Chandra Majumder	UR	28.07.1980
11	Shri Pradip Banik	UR	04.06.1980
12	Shri Ashit Baran Paul	UR	06.08.1981
13	Shri Sakti Pada Bhowmik	UR	27.07.1981
14	Shri Anup Kumar Dutta	UR	29.07.1981

[8] It has been contended by the respondents in the said order dated 07.03.2012 that the process of adjustment of *ad hoc* appointees against the vacant posts could only have been taken up after adjusting the regularly appointed officials first as on 08.06.1999 there were 14 directly recruited officers and their services were to be adjusted against the vacant post UR-7, ST-4 & SC-3. These officers are as under:

Sl. No.	Name of Employee	Category	Date of appointment to the post
1	Shri Manash Chakraborty	UR	21.05.1975
2	Shri Swapan Chakraborty	UR	18.03.1975
3	Shri Pradip Dutta	UR	18.03.1975
4	Shri Samar Chakraborty	UR	12.02.1976
5	Shri Bhaskar Sengupta	UR	11.02.1976
6	Shri Abhijit Ghosh	UR	09.02.1976
7	Shri Pradyut Kanti Roy	UR	10.02.1976
8	Shri Ratan Lal Gupta	UR	08.02.1976
9	Shri Sudhir Chandra Das	UR	11.02.1976
10	Shri Ramendra Chandra Majumder	UR	28.07.1980
11	Shri Pradip Banik	UR	04.06.1980
12	Shri Ashit Baran Paul	UR	06.08.1981
13	Shri Sakti Pada Bhowmik	UR	27.07.1981
14	Shri Anup Kumar Dutta	UR	29.07.1981

[9] As it is apparent that all the *ad hoc* appointees were regularised from various dates ranging from 11.01.1993 to 30.04.2009. Now the petitioners have approached this Court by filing these petitions for regularization with retrospective effect w.e.f. 11.01.1993 by way of the necessary modification in the order dated 07.03.2012, Annexure-10 to the writ petitions,

[10] Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioners has submitted that almost in a

similar circumstances when the State denied regularization from the date of ad hoc appointment, some *ad-hoc* engineers who were working under the Public Works Department filed one writ petition being W.P.(C) No.301 of 2006 and one learned Single Judge of this Court by the judgment dated 31.03.2012 directed the State to regularize them from the date of their ad hoc appointment. The said judgment when challenged by the State in the Writ Appal being W.A. No.67 of 2014 was affirmed by a Division Bench of this Court by the judgment dated 10.08.2015 holding that:

"[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 uninterruptedly 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."

[11] From the other side, Mr. S. Chakraborty, learned Addl. G.A has submitted that the said decision in **State of**

Tripura vs. Tribal Engineer Society, Tripura (the judgment dated 10.08.2015 in W.A. No.67 of 2014) cannot be applied in this case inasmuch as there was no vacancy for the regular appointment of the petitioners.

[12] The question, therefore, which arise from the rival contentions is that whether the petitioners are entitled to get the regularisation from the date of their *ad hoc* appointment, the initial appointment as their initial appointment continued in the post uninterruptedly till the regularization of their service in accordance with the rule. In the entire counter affidavit the respondents nowhere stated that the recruitment of the petitioners was *de hors* the rules or they were not eligible to be recruited in the post of Sericulture Development Officer. From their reply, what has appeared is that there was shortage of vacancy, there were no recruitment rules, at the time of *ad-hoc* appointment no requisition order was followed and the Finance Department did not allow to create supernumerary posts for their regularization. The respondents have not denied that the petitioners, except one, namely Smt. Sarbani Roy continuously worked for more than 15 years on *ad-hoc* appointment. When the ratio of direct recruitment was enhanced to 50% from 25% by way of amendment in the recruitment rules additional 8 posts were available to the direct recruitment category. However, the petitioners, namely, Joydipa Chakraborty and Rakhi Acharji were adjusted against the vacancies vice retirement of two

officers. The law laid down in **Direct Recruit Class –II Engineering Officers’ Association and others vs. State of Maharashtra and others**, reported in **AIR 1990 SC 1607** is unambiguously clear that if the ad hoc appointment is not a stop gap arrangement and the ad hoc appointment was continued till the regularization in accordance with the rules, the period of officiating service will be counted. The respondents cannot say that the initial appointments of the petitioners were stop gap arrangement as their continuance for 15 years would testify that their services were essential for the department. That apart, the plea that has been raised that there were no recruitment rules or there was no observance of the reservation or roster and as such, the petitioners could not be regularized cannot survive the test as one Sarbani Roy has been regularized w.e.f. 11.01.1993 as she belongs to Scheduled Caste category.

This Court is of the considered view that the state should have made the recruitment rules having regard to the necessity of regularization of the petitioners. What they have done in 2008 when that should have been much earlier. It should have been done w.e.f. 11.01.1993. But the State did not explore that possibility. Neither the State attempted to find a way out by creating supernumerary posts for regularization of the petitioners. As consequence of absence of sensible approach to the difficulty no doubt the petitioners have been prejudiced. Such prejudice cannot be allowed to continue. Hence, it is directed that the petitioners shall be regularized

w.e.f. the date of their initial appointments i.e. 11.01.1993 by creating necessary supernumerary posts. But their regularization shall not eclipse the seniority of the existing officers till the date of their regularization as shown in the order dated 07.03.2012. That apart, the petitioners also shall not be entitled to any financial benefit till the respective date of regularization as provided in the order dated 07.03.2012, but the benefits that be notionally carried out till the date of regularization as shown in the order dated 07.03.2012. If any financial entitlement accrues in favour of the petitioners, that shall be paid within 6(six) months from today.

[13] Having held so, these writ petitions stand allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

Sujay