

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.268 OF 2014

Shri Manoj Jamatia,
S/O Late Paran Pada Jamatia,
Resident of Ujjan Abhoynagar,
P.H. Road, Near Veterinary Hospital,
P.O. Abhoynagar, P.S. East Agartala,
District-West Tripura.

..... *Petitioner*

- *Vs* -

1. The State of Tripura,
Represented by the Secretary,
Department of Higher Education,
Government of Tripura,
New Civil Secretariat Complex,
P.O. Kunjaban, P.S. East Agartala,
District-West Tripura.

2. The Director of Higher Education,
Government of Tripura,
Old Secretariat Building, Agartala,
P.O. Agartala, P.S. West Agartala,
District-West Tripura.

3. The Principal,
Tripura Institute of Technology,
Narsingarh, P.O. Airport, P.S. Airport,
District-West Tripura.

4. Tripura Public Service Commission,
Represented by the Secretary, P.O. Agartala,
P.S. West Agartala, District-West Tripura.

..... *Respondents*

WP(C) NO.269 OF 2014

Shri Sadhan Sarkar,
S/O Shri Asini Sarkar,
Resident of Dhaleswar Road No.8/9,
Ashram Chaumuhani, P.O. Dhaleswar,
P.S. East Agartala, District-West Tripura.

..... *Petitioner*

- Vs -

1. The State of Tripura,
Represented by the Secretary,
Department of Higher Education,
Government of Tripura,
New Civil Secretariat Complex,
P.O. Kunjaban, P.S. East Agartala,
District-West Tripura.

2. The Director of Higher Education,
Government of Tripura,
Old Secretariat Building, Agartala,
P.O. Agartala, P.S. West Agartala,
District-West Tripura.

3. The Principal,
Tripura Institute of Technology,
Narsingarh, P.O. Airport, P.S. Airport,
District-West Tripura.

4. Tripura Public Service Commission,
Represented by the Secretary, P.O. Agartala,
P.S. West Agartala, District-West Tripura.

..... *Respondents*

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

Advocate for petitioner in
both the petitions : Mr. A.K. Bhowmik, Sr. Advocate

Advocate for respondent
Nos.1, 2 and 3 in both the
petitions : Mrs. A.S. Lodh, Addl. G.A.

Advocate for respondent
No.4 in both the petitions : Mr. P. Dutta, Advocate

Date of hearing : **06.04.2015**

Date of delivery of
Judgment & order : **16.04.2015**

Whether Fit for Reporting :

Yes	No
	√

JUDGMENT & ORDER

On the prayer of learned counsel both side, both the writ petitions are taken up together for hearing and disposal at the admission stage itself since the parties are similarly situated and the reliefs claimed in both the writ petitions are identical.

2. Heard learned senior counsel, Mr. A.K. Bhowmik for the petitioners and learned Addl. G.A., Mrs. A.S. Lodh for the State respondent Nos. 1, 2 and 3 and learned counsel, Mr. P. Dutta for respondent No. 4.

3. The undisputed facts are that following some directions of the Government of India for filling up various posts reserved for the members of Schedule Castes(for short, SCs) and Schedule Tribes(for short, STs) by way of a special drive, the respondents- Government of Tripura in the Higher Education Department also took initiative for filling up of the reserved category vacant posts in the Higher Education Department and with that intention issued advertisement in the daily newspapers of Tripura inviting applications for filling up of vacant posts of Lecturers in the Polytechnic Institute, Narsingarh which was subsequently upgraded as Tripura Institute of Technology(for short, TIT) and pursuant to such advertisement the petitioners also applied for the post of Lecturer of Polytechnic Institute and after proper interview they were selected and appointed in the post of Lecturer.

3.1. Sri Manoj Jamatia, the petitioner of WP(C) No.268 of 2014 was appointed in the post of Lecturer in Polytechnic Institute in the Civil Engineering trade in regular pay scale of ₹2,100-5,000/- vide Memo. dated 08.02.1996(*Annexure-1* to the writ petition) and he joined the post on 16.02.1996.

3.2. Sri Sadhan Sarkar, the petitioner of WP(C) No.269 of 2014 was also appointed in the post of Lecturer in Polytechnic Institute in the Electrical Engineering trade in regular pay scale of ₹2,100-5,000/- pursuant to said Memo. dated 08.02.1996 (*Annexure-1* to the writ petition) and the petitioner joined the post on 13.02.1996.

3.3. The appointment of the petitioners was made on *ad-hoc* basis under specific terms and conditions contained in the Memo. of appointment and initially it was for six months but such appointment continued without any break. It is also an admitted position that both the petitioners along with two others were appointed on regular basis by Memo. dated 17.11.2001 (*Annexure-3* to the writ petition) in the post of Lecturer in their respective trades of engineering in the pay scale of ₹8,000-13,500/- which was AICTE pay scale revised from the pay scale of ₹2,200-4,000/-.

4. The petitioners claimed that they were entitled to be regularized from the date of their initial appointment and were also entitled to the regular pay scale as per AICTE norms, *i.e.*

notification issued by the Government of Tripura, Finance Department, dated 30.6.1997(*Annexure-2* to the writ petition).

4.1. The petitioners contended that one Pankaj Kumar Das, who was also similarly situated, appointed like the petitioners on *ad-hoc* basis in the year 1996 and was regularized on 17.11.2001(*Annexure-3* to the writ petition), had filed a writ petition being WP(C) No.476 of 2010 before this Court against the same set of respondents and the Single Bench of this Court by judgment dated 27.09.2013 allowed the petitioner, Pankaj Kumar Das the relief sought in the writ petition that he was entitled to the service benefits including ACP from the date of his initial appointment on *ad-hoc* basis and consequential other service benefits. The petitioners contended that their case is covered by the judgment dated 27.09.2013 passed in WP(C) No.476 of 2010 which has already been complied with by the respondents granting all benefits to the said petitioner, Pankaj Kumar Das. The petitioners prayed for issuing a writ of mandamus directing the respondents to regularize them from the date of their initial appointment in the pay scale of ₹2,200-4,000/- as per AICTE norms and to grant them CAS-I and CAS-II taking into account their past *ad-hoc* service.

4.2. Manoj Jamatia, the petitioner of WP(C) No.268 of 2014 prayed for granting CAS-I *w.e.f.* 16.02.2002 on his completion of six years of service and CAS-II *w.e.f.* 16.02.2007 on his completion of further five years of service. Similarly, the petitioner, Sadhan

Sarkar prayed for allowing him CAS-I w.e.f. 13.02.2002 on his completion of six years of service from the date of his initial appointment and thereafter CAS-II w.e.f. 13.02.2007 on his completion of further five years of service.

5. It is an admitted position that the petitioners were appointed on a special drive against regular vacant posts of Lecturer in the Polytechnic Institute but not strictly as per the prevailing service rules. According to their terms of appointment as contained in *Annexure-1* i.e. Memo. dated 08.02.1996, the appointment of the petitioners was purely temporary for a particular period and that they should face the Tripura Public Service Commission (for short, TPSC) on the basis of notification/advertisement to be made by TPSC for selection to the post of Lecturer of their particular trade and if they fail to get themselves qualified through TPSC their appointment will be automatically terminated. It is also an admitted position that from the date of their appointment in the year 1996 till they were regularized on 17.11.2001 vide *Annexure-3* to the writ petition, there was no selection process initiated by the TPSC.

5.1. It is the case of the respondent No.4, TPSC that in the year 1997 an advertisement was made inviting applications for filling up of four posts of Lecturer in the Polytechnic Institute but that advertisement was subsequently abandoned because of the new AICTE norms, pursuant to the representation made by the

Teachers' Association of the Polytechnic Institute. Thereafter, no process was initiated by the TPSC till the petitioners were regularized by notification dated 17.11.2001.

6. Respondent Nos.1, 2 and 3 *inter alia* contended that the case of the present petitioners and the case of Pankaj Kumar Das cannot be treated as similar since the petitioners had no requisite qualification for appointment to the post of Lecturer in the particular trade of engineering and therefore they are not covered by the judgment dated 27.09.2013 passed in WP(C) No.476 of 2010 in the case of Pankaj Kumar Das.

7. It is an admitted position that Pankaj Kumar Das and the present petitioners along with another, Smt. Madhuchhanda Chowdhury were appointed on *ad-hoc* basis in the year 1996 and they continued in service without any break till they were regularized by notification dated 17.11.2001. *Annexure-3*. The said notification dated 17.11.2001 clearly shows that the present petitioners and Pankaj Kumar Das, the petitioner of WP(C) No.476 of 2010, were regularized by the same notification which was issued pursuant to the approval of the Council of Ministers.

7.1. Though it is argued by the learned Addl. G.A. that the petitioners had no requisite educational qualification for appointment to the post of Lecturer but in support of the same no document is placed on record to show that the petitioners' case was

different than that of the case of Pankaj Kumar Das, the writ petitioner of WP(C) No. 476 of 2010. The petitioners by filing an affidavit-in-reply brought on record an advertisement dated 15.11.1997(*Annexure-17* to the rejoinder affidavit) and learned senior counsel, Mr. Bhowmik has submitted that even in that advertisement dated 15.11.1997 there was no stipulation that for appointment to the post of Lecturer in the Polytechnic Institute one should have degree in the branch of particular engineering subject with first class. The particular advertisement under which the petitioners applied for the post of Lecturer has not been produced. Therefore, based on *Annexure-17* no conclusion can be arrived. While the petitioners were appointed in the regular vacant post of Lecturer after proper advertisement in the newspaper and a selection process through interview, it should be presumed that the petitioners had the requisite qualification as required in the advertisement made by the respondents for the post of Lecturer and since they were satisfying the requisite qualification, they got selected and were appointed. The respondents since regularized the services of the petitioners after a Cabinet decision by notification dated 17.11.2001 the stand, that the petitioners had no requisite qualification, does not sound good from the side of the respondents. Definitely, the petitioners had the requisite qualification as per advertisement and therefore they were appointed and subsequently regularized.

8. Since there is no difference between the petitioners of the present writ petitions and the petitioner of WP(C) No.476 of 2010 and since judgment dated 27.9.2013 passed in WP(C) No.476 of 2010 has already been implemented, I find no reason at all to treat the present petitioners differently than that of the petitioner of WP(C) No.476 of 2010.

9. WP(C) No.476 of 2010 was disposed of with the following observation/direction:

*"[13] In view of **Aghore Nath Dey (supra)** this Court is of the opinion that since there is no fault of the appointee, he cannot be blamed for the delay. The delay is entirely attributable to the respondent Nos. 1, 2 and 3. As such the petitioner is entitled to get the benefit of the tenure of service from 19.02.1996 to 17.11.2001 for all purposes. Thus the respondents are directed to treat the petitioner regularized in the post of the Lecturer of the Polytechnic Institute, Narsingarh(now upgraded to Tripura Institute of Technology, Narsingarh) with effect from 19.02.1996 for all purposes.*

[14] As corollary to such direction, the impugned decision contained in the Letter No. F.1(8-49)-DHE/ESTT (G)/96/2586/2 dated 25.11.2010 issued by the respondent No.2 addressed to the respondent No.3(Annexure-19 to the writ petition) stands quashed. The respondent Nos. 1, 2 and 3 are further directed to give the benefit of the CAS considering the appointment of the petitioner on regular basis with effect from 19.02.1996. The said respondents are further directed to release all pecuniary and other service benefits to the

petitioner as entitled to him under the CAS or otherwise within a period of six months from today without fail.

[15] Thus, the writ petition is allowed to the extent as indicated above. However, there shall be no order as to costs."

Admittedly, the above directions have already been complied. So the present petitioners being similarly situated are entitled to similar relief.

10. Therefore, the respondents are directed to treat the petitioner, Manoj Jamatia of WP(C) No.268 of 2014, regularized in the post of Lecturer of the Polytechnic Institute, Narsingarh, now upgraded as TIT, Narsingarh, *w.e.f.* 16.2.1996 and Sadhan Sarkar, the petitioner of WP(C) No.269 of 2014, regularized in the post of Lecturer in the Polytechnic Institute, Narsingarh, now upgraded as TIT, Narsingarh, *w.e.f.* 13.02.1996. They are also entitled to get CAS-I taking into account their past *ad-hoc* services and consequent thereof the petitioner Manoj Jamatia of WP(C) No.268 of 2014 shall be allowed CAS-I *w.e.f.* 16.02.2002 and CAS-II *w.e.f.* 16.02.2007 and the petitioner Sadhan Sarkar of WP(C) No.269 of 2014 shall be allowed CAS-I *w.e.f.* 13.02.2002 and CAS-II *w.e.f.* 13.02.2007.

11. With the above observations and directions the writ petitions stand disposed of. The respondents are directed to comply with the order within six months from today without fail.

12. Parties are to bear their own costs.

JUDGE