

HIGH COURT OF TRIPURA
AGARTALA

W.P(C) NO.384 OF 2014

Smt.Madhuchhanda Choudhuri,
Assistant Professor, Tripura Institute of Technology,
Wife of Lt. Debashis Ghosh,
36-Office Lane, PO. Agartala, Battala,
Agartala, West Tripura, PIN 799001.

...Petitioner.

- Versus -

1. The State of Tripura,
To be represented by the Secretary,
Department of Education (Higher),
Government of Tripura,
New Secretariat Complex,
PS. New Capital Complex, PO. Kunjaban,
Agartala, West Tripura, PIN 799006.

2. The Director of Higher Education,
Government of Tripura,
Old Secretariat Building, Agartala,
PO. Agartala, PIN 799001.

3. The Principal,
Tripura Institute of Technology,
Narsingarh, PO. Bimangarh,
PS. Airport, Agartala,
District West Tripura.

4. Tripura Public Service Commission,
(To be represented by the Secretary,
Tripura Public Service Commission,
Akhaura Road, Agartala,
PO. Agartala, West Tripura,
PIN 799001.

..... Respondents.

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

For the Petitioner	: Mr. P. Roy Barman, Advocate.
For the Respondents	: Mr.S.Chakraborty, Addl. G.A. Mr. P. Dutta, Advocates.

Date of hearing & : **27.04.2015.**
delivery of judgment
and Order.

Whether fit for reporting : **YES**

JUDGMENT & ORDER(ORAL)

With the consent of learned counsel of both side, the case is taken up for hearing and disposal at the admission stage itself.

2. Learned counsel Mr. P. Roy Barman for the petitioner submitted copies of judgment passed by this Court in WP(C) No.476/2010 and WP(C) No.268/2014 and WP(C) 269/2014 (common judgment) and submitted that this case is a covered case and prays for disposal of this writ petition in terms of the judgment dated 27.09.2013 in WP(C) No. 476/2010 and the judgment dated 16.04.2014 in WP(C) No.268/2014 and WP(C) No.269/2014.

3. Learned Addl. G.A., Mr. S. Chakraborty appearing for the respondent Nos. 1, 2 and 3 submitted that the petitioner of this case and the petitioners of the earlier writ petitions, referred by learned counsel Mr. Roy Barman, are not similarly situated. The petitioners of WP(C) 476/2010 and WP(C) Nos. 268/2014 and 269/2014 belonged to reserved category candidates and were appointed on a special drive after advertisement and

interview but the petitioner of this case was appointed without any advertisement and without any interview simply on the basis of her own application and so the case of the petitioner cannot be termed as similarly situated with that of the petitioners of earlier writ petitions.

4. Learned counsel Mr. P. Dutta appearing for the respondent No.4 has fairly submitted that except what learned Addl. G.A. has submitted the case of the present petitioner and the case of the petitioners of the earlier writ petitions were almost similar since all were appointed on *ad-hoc* basis without following the recruitment rules and subsequently by a same notification dated 17.11.2001 (Annexure P/8 to the writ petition) they were regularized with the approval of council of ministers without concurrence of Tripura Public Service Commission (for short, TPSC) and the recruitment rules.

5. Learned counsel Mr. Roy Barman submitted that the petitioner had all requisite qualification for appointment to the post of Lecturer of Polytechnic Institute, Narsingarh which was subsequently upgraded as Tripura Institute of Technology (for short, TIT) and she was appointed on *ad-hoc* basis by Memo dated 30.06.1992 (Annexure-P/3 to the writ petition) and she joined to the post of Lecturer, Polytechnic Institute on 01.07.1992. Such

ad-hoc appointment was extended time to time without any break till she was regularized by Memo dated 17.11.2001. She was entitled to be regularized w.e.f. the date of her initial appointment on *ad-hoc* basis i.e. 01.07.1992 but she has been regularized prospectively w.e.f. the notification dated 17.11.2001 and thereby she felt aggrieved and submitted representations. It is also submitted by Mr. Roy Barman that Pankaj Kumar Das, the petitioner of WP(C) No.476/2010 has been regularized with all benefits as per direction of this Court in judgment dated 27.09.2013 in WP(C) 476/2010 and the other two petitioners of WP(C) No.268/2014 and WP(C) No.269/2014 i.e. Manoj Jamatia and Sadhan Sarkar also have been allowed the same benefits and the petitioner being similarly situated is also entitled to the same benefit and she cannot be differently treated than that of the petitioners of earlier writ petitions. The petitioner, therefore, prayed for regularizing her service w.e.f. 01.07.1992 and also to sanction pay scale of Rs.2200-4000/- as per AICTE norms and to grant CAS-I w.e.f. 01.07.1998 and CAS-II w.e.f. 01.07.2003.

6. The petitioner contended that she completed bachelor of engineering degree with 1st class in Electrical Engineering in the year 1989 and she secured 70% marks. She also obtained Master Degree from Tripura University in the year 2009 with 70% marks. She enclosed copies of her

mark sheets with the writ petition. The Joint Secretary to the Govt. of Tripura vide Memo dated 30.06.1992 (Annexure-P/3 to the writ petition) appointed the petitioner as Lecturer in Electrical Engineering, Polytechnic Institute, Narsingarh purely on *ad-hoc* basis initially for a period of 6 months in the scale of pay of Rs.2100-5000/- and she joined the post of Lecturer, Polytechnic Institute on 01.07.1992. Though the petitioner was initially appointed for 6 months but such appointment being extended time to time continued without break.

It is an admitted position that the petitioner and Sri Pankaj Kumar Das, the petitioner of WP(C) 476 of 2010, Sri Manoj Jamatia, the petitioner of WP(C) No. 268 of 2014 and Sri Sadhan Sarkar, the petitioner of WP(C) No.269 of 2014 were regularized by the same notification dated 17.11.2001 (Annexure P/8 to the writ petition) in the post of Lecturer in their respective trade of Engineering in the pay scale of Rs.8000-13,500/- which was AICTE pay scale revised from the pay scale of Rs.2200-4000/-. The petitioner claimed that she is entitled to be regularized from the date of her initial appointment i.e. 01.07.1992 and also entitled to be regular pay scale as per AICTE norms i.e. notification dated 30.06.1997 (Annexure P/7 to the writ petition).

It is also contended by the petitioner that Pankaj Kumar Das, the petitioner of WP(C) 476/2010, who was also similarly situated, appointed on *ad-hoc* basis in the year 1996 and was regularized on 17.11.2001 under same notification, had filed a writ petition WP(C) 476/2010 before this Court against the same set of respondents and the Single Bench of this Court by judgment dated 27.09.2013 allowed the petition. The said Pankaj Kumar Das has been given the relief sought in the writ petition that he was entitled to the service benefits including ACP from the date of initial appointment on *ad-hoc* basis and consequential other service benefits. The petitioner claimed that her case is covered by the judgment dated 27.09.2013 which has already been implemented/complied with by the respondents granting all benefits to the said petitioner Pankaj Kumar Das. The petitioner, therefore, prayed for issuing writ of mandamus directing the respondents to regularize her from the date of her initial appointment in the pay scale of Rs.2200-4000/- as per AICTE norms and to grant her CAS-I and CAS-II taking into account her past *ad-hoc* services.

7. It is an admitted position that from 01.07.1992 till 17.11.2001 the petitioner rendered services as Lecturer of Polytechnic Institute (now TIT) on *ad-hoc* basis. She

prayed for granting her CAS-I w.e.f. 01.07.1998 and CAS-II w.e.f. 01.07.2003.

8. Respondent Nos. 1 and 2 *inter alia* contended that the petitioner was not appointed through any selection process and also she did not apply after any advertisement. She was appointed on *ad-hoc* basis on the basis of application made by her and her father. It is, however, not disputed that the petitioner had all requisite qualification but it is an admitted position that she was not appointed through a selection process as per the recruitment rules.

9. Respondent No.4, TPSC contended that in the year 1997 on the basis of a requisition made by the administrative department an advertisement was made inviting application for filling up of four posts of Lecturer in the TIT but that advertisement was subsequently cancelled because of new AICTE norms pursuant to the representation by the Teachers' Association and thereafter no process was initiated by TPSC till the petitioner was regularized by notification dated 17.11.2001 even after repeated letters written by the TPSC to the administrative department.

10. It is an admitted position that the respondents referred the case of the petitioner to TPSC for concurrence but TPSC did not agree and subsequently the respondents

made requisition for regular appointment to the post of Lecturer and advertisement was made in the year 1997 but subsequently that advertisement was cancelled. It is, therefore, evident that there was no scope for the petitioner to get her *ad-hoc* appointment regularized through a selection process conducted by TPSC. The administrative department with the concurrence of council of ministers by notification dated 17.11.2001 (Annexure P/8 to the writ petition) regularized the services of the petitioner and 3 others i.e. the writ petitioners of other referred writ cases and so the respondents cannot take the stand that the petitioner was irregularly appointed or that her case is not similar to that of the case of Pankaj Kumar Das, Sadhan Sarkar and Manoj Jamatia. Those Pankaj Kumar Das, Sadhan Sarkar and Manoj Jamatia were appointed pursuant to an advertisement and through a selection process but not according to the recruitment rules and not through TPSC and they were appointed on *ad-hoc* basis initially for 6 months and subsequently it was extended time to time. The petitioner was also appointed on *ad-hoc* basis on her own application and on the application of her father initially for a period of 6 months and thereafter it continued without break and all those petitioners were regularized by a common notification dated 17.11.2001 with the concurrence of council of ministers, therefore, I am of

considered opinion that the petitioner Madhuchhanda Choudhuri is similarly situated to that of Pankaj Kumar Das, the petitioner of WP(C) No.476/2010; Sri Sadhan Sarkar, the petitioner of WP(C) No.269/2014 and Sri Manoj Jamatia, the petitioner of WP(C) No. 268/2014.

11. It is an admitted position that the State-respondents already implemented the direction given by this Court in WP(C) No.476/2010. A copy of the judgment dated 27.09.2013 is annexed with this writ petition. As I find WP(C) No. 476/2010 was disposed of with following observation/direction:-

“[12] Later on, the respondent Nos. 1, 2 and 3 have admittedly regularized the service of the petitioner without complying required procedure as laid down in the recruitment rules for direct recruitment. As such the Council of Minister of the concerned department ought to have regularized the service of the petitioner from the date of his initial appointment made by the memorandum dated 08.02.1996 (Annexure-1 to the writ petition) with effect from 19.02.1996. No reason whatsoever has been provided for exclusion of the period so far the petitioner is concerned.

*[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.”

12. In disputably the above directions have been complied with and all the benefits have been given to the petitioner Pankaj Kumar Das.

13. Similar direction has been given in the common judgment of WP(C) No.268/2014 and WP(C) No.269/2014. A copy of the judgment is placed on record and the direction given in that judgment reads as follows:-

“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.”

14. Since I am of considered opinion that the case of the present petitioner and the case of the petitioners of WP(C) No.476/2010; WP(C) No.268/2014 and WP(C) No.269/2014 are similar and identical, I think the petitioner also shall be entitled to get same relief.

15. The respondents are directed to treat the petitioner Madhuchhanda Choudhuri regularized in the post of Lecturer of Polytechnic Institute, Narsingarh now upgraded as TIT, Narsinghar, w.e.f. 01.07.1992. She is also entitled to get CAS-I taking into account of her past *ad-hoc* services and consequent thereof entitled to get CAS-I w.e.f. 01.07.1998 and CAS-II w.e.f. 01.07.2003.

16. With the above observation and direction, the writ petition stands disposed of.

17. The respondents are directed to comply the order within 6 months from today without fail.

18. Parties to bear their own costs.

JUDGE.