

**THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) NO. 449 OF 2014

1. Sri Gopal Chandra De,
S/O. Lt. Jotish Chandra Dey,
R/O. Ujan Abhoynagar,
P.O. Abhoynagar,
P.S. East Agartala,
Agartala, District – West Tripura.
2. Sri Dilip Deb,
S/O. Bhano Deb,
R/O. vill, P.O. & P.S.-Amtali,
District – West Tripura.
3. Sri Brajendra Chandra Debnath,
S/O. Banamali Debnath,
R/O. Vill & P.O. Siddhi Ashram,
P.S. Amtali, District- West Tripura,
4. Sri Sadhan Kumar De,
S/O. Lt. Dharendra Chandra De,,
R/O. Bhattapukur near Nivedita Sangha,
P.O. A.D. Nagar, P.S. A.D. Nagar,
Agartala, District- West Tripura,
5. Sri Bhusan Chandra Debnath,
S/O. Late Madan Mohan Debnath,
R/O. East Badharghat, near Roy Colony,
P.S. Amtali, P.O. Siddhi Ashram,
District- West Tripura,
6. Sri Sankar Acharhee,
S/O. Gopal Acharjee,
R/O. Chandina Mura,
P.O. Madhya Bhuban Ban,
P.S. West Agartala,
District- West Tripura,
7. Sri Khokan Kumar Saha,
S/O. Indu Bhusan Saha,
R/O. Vill & P.O.-Sekerokote,
P.S. Amtali, District- West Tripura,
8. Sri Sudhir Ranjan Roy,
S/O. Dharendra Chandra Roy,
R/O. Vill, P.O. & P.S. Amtali,
near Shib Bari, District- West Tripura,

9. Sri Chitta Ranjan Sarkar,
S/O. Akhil Chandra Sarkar,
R/O. Vill & P.O. Ishan Chandra Nagar,
P.S. Amtali, District- West Tripura,
10. Sri Malin Choudhury,
S/O. Lt. Krishna Kamal Choudhury,
R/O. Shivenagar, P.O. Gajaria,
P.S. Bishalgarh, District – Sepahijala,

.....**Petitioners.**

- Versus -

1. The Oil & Natural Gas Corporation,
Represented by its Manager(IR),
Corporate Industrial Relations Department,
O.N.G.C.(Tel Bhaban), Dehradun,
2. The Chief Manager(F & A)-CPF Section,
Shed No.4, Oil & Natural Gas Corporation Ltd.,
Tel Bhaban, Dehradun.
3. The Asset Manager,
Oil & Natural Gas Corporation Limited,
Tripura Asset, R & P Section,
Badharghat Complex, Agartala-799014,
4. The Director(Onshore),
Oil & Natural Gas Corporation Ltd.,
Tripura Asset, Badharghat Complex,
P.O.- ONGC, District- West Tripura.

.....**Respondents.**

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

For the petitioners	: Mr. A. C. Bhowmik, Sr. Advocate, Mr. A. Bhowmik, Mr. S. Chakraborty, Mr. D. Sarkar, Advocates.
For the respondents	: Mr. S. Deb, Sr. Advocate, Mr. R. Dasgupta, Advocate.

Date of hearing & delivery of
Judgment and Order : **06.02.2015.**

Whether fit for reporting : **No.**

JUDGEMENT AND ORDER(ORAL)

By filing this writ petition the petitioners prayed for issuing following writ of certiorari and writ of mandamus in their favour :-

"iii. Issue rule calling upon the respondents to show cause as to why a writ of certiorari or any other appropriate writ shall not be issued for quashing the advertisement and the selection process pursuant thereto, for the recruitment of the regular posts of Junior Motor Vehicle Driver (HV), Junior Motor Vehicle Driver (Winch Operation), and Junior Fire Supervisor, Junior Fireman, for the Respondents Corporation.

AND

Issue Rule to show cause as to why a writ of mandamus or any other appropriate writ directing the Respondents to absorb the petitioners as regular employees, shall not be issued."

2. Heard learned senior counsel, Mr. A. C. Bhowmik, assisted by learned counsel, Mr. D. Sarkar for the petitioners and learned senior counsel, Mr. S. Deb, assisted by learned counsel, Mr. R. Dasgupta for the respondents.

3. The petitioners, *inter alia*, contended that they were appointed as contingent workers under the respondents, the Oil and Natural Gas Corporation Ltd. (for short 'ONGC'), Tripura Asset, in the year 1988 and 1989 by proper advertisement and after observing all interview process etc. Since their appointment, petitioner Nos.1, 2 and 3 were working as drivers of heavy vehicles, petitioner Nos. 4 and 5 were working in the

Auto Workshop, petitioner Nos. 6 and 7 were working in the Material Section(MM Section), petitioner No.8 was deputed in Info. Com., petitioner No.9 was working in Transport Section and petitioner No.10 was working in Forward Batch. They had performed their duties for last 25/26 years without any blemish. A list of contingent workers, who had completed 240 days during 12 consecutive months, was published by ONGC, wherein the names of the petitioners were also found place and a copy of the same marked as Annexure-P/1. Thereafter a final list of casual and contingent workers was published on 30.01.1990, wherein the names of the petitioners were found place (Annexure-P/2 to the writ petition).

A meeting was held on 25.09.1999 between the ONGC Din Majdur Union, to which the petitioners were members, and the management of the ONGC and in that meeting the Director(Personnel) of ONGC informed the petitioners' Union that in order to regularize, a contingent worker must be at least Matriculate. Hence, all the contingent workers must clear their Madhyamik examination at the earliest. The Director (Personnel) also informed the Union of the petitioners that proposal for creation of posts has been received and after detailed discussion the Director (Personnel) informed that as many as twenty posts of contingent worker would be created and by the year 2000-2001 all the contingent workers will be absorbed in regular posts. A copy of the minutes of that meeting has been annexed as Annexure-P/3.

The petitioner also contended that thereafter also meetings between the respondent-ONGC and the Workers' Union were held and minutes of such meetings dated 16.04.2000 and 23.03.2004 are annexed as Annexure-P/4 and Annexure-P/5 respectively. In the minutes of the meeting dated 23.03.2004 the Asset Manager assured that priority will be given to the contingent workers whenever the suitable vacancies will arise subject to fulfillment of the eligibility criteria for the posts and the contingent workers were informed that their regularization will not be linked with Apprentices. The petitioners contended that there were altogether 38 casual/contingent workers and out of them 20 workers were already absorbed in regular posts in the year 2000. Eighteen workers including the petitioners continued their job as contingent workers and out of them, 10 petitioners acquired Madhyamik passed certificate in the meantime and they submitted their Madhyamik passed certificate before the authority and also submitted representation for their regularization on 12.07.2014 (Annexure-P/8 to the writ petition).

It is contended by the petitioners that the respondents-Corporation published an advertisement for filling up the posts of Junior Motor Vehicle Driver(HV), Junior Motor Vehicle Driver (Winch Operation) and Junior Fireman etc. and the petitioners contended that they may be absorbed in those posts after regularization and that the respondents made the

advertisement with a view to deprive them from regularization. A copy of that advertisement No.1/2013-Tripura Asset, marked as Annexure-P/9. It is contended by the petitioners that they acquired requisite qualification and so their contingent service should be regularized.

4. The respondents contended that petitioner Nos.3 to 10 along with others (in total 14 in numbers) earlier filed W.P.(C) No.204 of 2009 before the then Gauhati High Court, Agartala Bench seeking similar and identical relief and that writ petition was dismissed. They preferred writ appeal and the said writ appeal was also dismissed. Therefore, the present writ petition filed by the petitioners is bad for suppressing the material fact and also barred by *res judicata*. Referring to the observations made by the writ Court in W.P.(C) No.204 of 2009 and Writ Appeal No.32 of 2009, the respondents contended that all the points raised in the present writ petition were decided by the writ Court in the earlier writ petition, which was merged with the decision of the appellate Court in Writ Appeal No.32 of 2009 and hence, this Court need not decide the issues again.

It is also contended by the respondents that the petitioners along with others were engaged as casual workers not against any sanctioned posts and no advertisement or selection process were undergone while appointing them as casual workers. The petitioners cannot as of right claim

regularization in the service in view of the decision already taken in the earlier writ petition and writ appeal.

5. The petitioners by filing rejoinder affidavit admitted the fact of earlier writ petition and contended that it was a unintentional mistake that the fact of earlier writ petition was not mentioned in the present writ petition. It is contended by the petitioners that they have acquired requisite qualification and so they are entitled to be absorbed and/or regularized as a Group-D worker.

6. Learned senior counsel, Mr. Bhowmik has contended that the petitioners being engaged as casual workers working for last 25/26 years continuously without any break and they have acquired a legitimate right to be regularized in a suitable Group-D post. In course of his argument, learned counsel abandoned the first relief claimed in the writ petition in respect of quashing of advertisement (Annexure-P/9) since Annexure-P/9 is an advertisement meant for filling up of Class-III posts, whereas the petitioners praying for their regularization in Group-D (Class-IV) posts. Accordingly, learned senior counsel, Mr. Bhowmik did not insist the prayer for quashing the advertisement and the selection process. He has however, insisted that at the time of earlier writ petition, the petitioners had no requisite qualification of Madhyamik Pass, but in the meantime, they have passed Madhyamik examination and so they have become eligible for their regularization as a

Group-D staff under the ONGC. He has also contended that there was promise made by the ONGC to regularize them and the ONGC, Tripura Asset wrote to the headquarter for creation of 23 posts to regularize the petitioners and so, while such assurance was given by the ONGC to the petitioners, they cannot now go back to their promise and they are bound to regularize the petitioners in Group-D posts.

7. Per contra, learned senior counsel, Mr. Deb has submitted that all the points raised in the present writ petition were discussed and decided specifically in the earlier writ petition and writ appeal filed by the petitioner Nos. 3 to 10 and others. There is not a single point left for consideration by this Court in the present writ petition.

8. It is an admitted position that the petitioners were engaged as casual/contingent workers in the year 1988 and 1989 and they have been working as such casual/contingent workers continuously. It is also an admitted position that there was a meeting held between the management of ONGC and the workers' union of the petitioners and others on 25.09.1999 and in that meeting it was held that for regularization all the casual/contingent workers must have qualification of Madhyamik passed and it was also assured that by 2000-2001 all the contingent workers will be regularized.

9. The petitioners also brought on record certain documents that the ONGC, Tripura Asset wrote its headquarter

for creation of 23 posts for regularization of 18 casual workers (Annexure-P/6 to the writ petition). Further the minutes of the meeting dated 23.03.2004 (Annexure-P/5 to the writ petition) shows that the Asset Manager assured the contingent workers that whenever there will be suitable vacancies, the contingent workers will be regularized subject to fulfillment of the eligibility criteria for the post.

10. It is an admitted position that petitioner Nos.3 to 10 along with six others earlier filed W.P.(C) No.204 of 2009 before Agartala Bench of the then Gauhati High Court and that writ petition was dismissed by judgment dated 20.10.2009.

The operative part of the judgment reads as follows :-

"28. Considering the facts involved in this case it can be safely said that the decisions relied by Mr. Bhattacharjee are distinguishable due to the facts involved in those decisions. But as the matter of regularization of the petitioners are still under consideration of the authority and they have not taken any decision regarding the representation of the petitioners dated 21.05.2009(annexure 4 to the writ petition), this Court hope and trust that the respondent authority would consider the representation of the petitioners, if not considered by this time, keeping in mind the service of the similarly situated persons have already been regularized by the authority relaxing their educational qualification. The respondents are directed not to disengage the petitioners, as they have been working for a long time and regularization of their service is still under consideration, without following the procedure prescribed by law. There is no hesitation in the mind of this Court that the departmental circular dated 19.05.2009 (annexure 5 to the writ petition) whereby and whereunder applications were invited from amongst the interested departmental candidates has no application so far the petitioners are concerned, as by that circular the authority invited applications for Class III post, not for Class IV post against which the petitioners prayed for regularization."

11. Aggrieved, the petitioners of that writ petition preferred Writ Appeal No. 32 of 2009 and the Division Bench of

the then Gauhati High Court by judgment dated 30.11.2010 dismissed the appeal with the following order :-

"36. Because of what have been discussed and pointed out above, this Court does not find that the appellants have been able to make out any case warranting interference with the conclusions reached in the writ petition. We, therefore, uphold the dismissal of the writ petition and, taking the view that this appeal is wholly without merit, we hereby dismiss the appeal."

12. A reading of the writ petition of W.P.(C) No.204 of 2009 makes it abundantly clear that the present writ petition and the earlier writ petition were filed on almost same and identical ground. In the earlier writ petition, the petitioners sought the following writ of mandamus, which were rejected by the writ Court with speaking judgment :-

"In the premises aforesaid it is prayed that Your Lordship may be pleased to consider the above facts and issue Rule NISI calling upon the respondents to show cause as to why a writ of Mandamus should not be issued directing the respondents to absorb the petitioners in regular Class IV posts;

- AND/OR -

as to why any other writ or direction should not be issued directing the respondents not to fill up the vacant regular Class IV posts without absorbing the petitioners;

- A N D -

In case the respondents show cause, Your Lordship may be pleased to hear the parties and make the Rule absolute;"

In the writ appeal also all the issues, which are raised by learned senior counsel, Mr. Bhowmik were specifically dealt with and the appeal was dismissed.

13. The petitioners contended that they were appointed as contingent workers after advertisement and observing interview process, but in support thereof they had produced not a single scrap of paper. So, the petitioners have failed to prove that they were engaged/appointed after advertisement and after an interview process in due course. It is the case of the petitioners that there were no posts for regularizing them and the respondent-ONGC, Tripura Asset wrote to their headquarter at Dehradun to create 23 posts for absorbing the petitioners and other contingent workers, which itself speaks that the petitioners were not appointed as against any sanctioned posts. It is, therefore, abundantly clear that they were engaged as contingent workers *de horse* the rules and without following any recruitment process. It is also an admitted position that the petitioners had no requisite qualification for being absorbed at the time when the meetings were held and at the time of pendency of earlier writ petition and writ appeal. They have now completed their Madhyamik examination and praying for their regularization. Simply because they have acquired Madhyamik passed certificate, they cannot as of right claim regularization and that issue has already been decided in the earlier writ petition and writ appeal.

14. A contingent or casual worker cannot, as of right, claim regularization of his/her service in a regular post and at least the Court cannot issue such direction to make regularization of a contingent worker in a regular post.

15. The Supreme Court in the case of **Secretary, State of Karnataka & ors. V. Umadevi(3) and ors**, reported in **(2006) 4 SCC 1** has laid down the law on the issue which is followed in the subsequent decisions of the Apex Court and the other Courts in India. In paras 47, 48 and 49 the Apex Court has held as follows :-

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been

employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution."

16. The petitioners prayed for regularization in Group-D posts and so, their prayer to quash Annexure-P/9, the advertisement, is without any merit. The prayer of the petitioners for their absorption as a regular employee also cannot be directed by this Court in the writ petition since they were engaged casually and not against any sanctioned post. If

any future vacancy arises in Group-D services of ONGC, the regularization of the petitioners should be taken into consideration on priority basis since they have already acquired requisite qualification. They are working for last 25/26 years without break and so, the respondents should take initiative, pursuant to their promise, for regularizing them in case of any future vacancy arises in Group-D posts.

17. With this observation, the writ petition stands disposed of.

JUDGE