HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) No.201/2020

Sri Biplab Bhowmik and another

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

For Petitioner(s) : Mrs. S. Deb Gupta, Advocate.

For Respondent(s) : Mr. M. Debbarma, Addl. GA.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

25/11/2020.

Petitioners have sought regularization in service upon completion of 10 years of service in terms of the Scheme framed by the State Government.

Brief facts are as under:

Petitioner No.1 was engaged as a casual worker on 18.09.2003. Likewise petitioner No.2 was engaged as a casual worker from 05.04.2006, both under Tripura Institute of Technology, ('TIT', for short), which is a State Government Institute. They claim the benefit of regularization in terms of the State Scheme. They point out that several persons engaged

around the same time have already been regularized barring the two of them. Petitioners have produced a copy of a judgment dated 04.03.2016 passed by the learned Single Judge in ***W.P. (C) No.229 of 2015*** in which according to them, similarly situated casual workers were ordered to be regularized. They point out that the Government eventually regularized their services.

The main stand taken by the respondents in a detailed affidavit dated 11.09.2020 is that the petitioners were engaged under a centrally funded scheme therefore they are not entitled to be regularized. With respect to the decision of this Court in ***W.P. (C) No.229 of 2015***, in case of ***Sri Sajal Kar and others vs. The State of Tripura and others***, the respondents contend that those petitioners, who were engaged prior to 31.03.2003 whereas both the petitioners in the present case have been engaged after the said date. The relevance of the said cutoff date of 31.03.2003 is sought to be projected on the basis of the Memorandum dated 21.01.2009 issued by the Government of Tripura in which after laying down the terms for regularization of casual workers and DRWs, it has been further provided as under:

> "3. There shall be a complete ban on engagement of DRW/Casual/Contingent etc. workers after 31.3.2003 without concurrence from Finance Department. Responsibility shall be fixed on the official found responsible for any irregular engagement henceforth. Such irregular engagement shall have to

be instantly terminated. The wages, if paid any, shall be recovered from the official concerned."

To my mind, there is no material distinction in the facts of the present petition as compared to those involved in the case of ***Sri Sajal Kar and others (supra)***. The learned Single Judge was also confronted with a question of the casual labourers being engaged under a Scheme which incidentally was the same Scheme under which the present petitioners have been engaged. In the said decision, it was observed as under:

"19. The benevolent scheme for regularisation of such casual workers cannot be frustrated by the technical approach of this nature, rather, it should be read liberally else there would be great injustice. Hence, it is necessary that the petitioners are considered for regularisation under the scheme as reflected by the memorandum dated 01.09.2008 read with the memorandum dated 03.01.2014 as stated.

20. It has clearly transpired that the petitioners have always been treated as the casual worker of Polytechnic Institute, now the Tripura Institute of Technology and their services were accordingly realised. Still they are so working. Even similarly circumstanced person, namely Dipak Das who has been regularised, was also the casual worker of the Community Polytechnic. Thus, the difference as had been made between Dipak Das and the petitioners is not based on intelligible differentia for purpose of relegating the mandate under Article 14 of the Constitution of India. Hence, in the considered opinion of this court, the petitioners are entitled to be considered by the

respondents for regularisation under the memorandum dated 01.09.2008, as amended from time to time.

21. Having held so, the respondents are directed to consider the regularisation of the petitioners in terms of the memorandum under No.F.10(2)-FIN(G)/2008(Part) dated 01.09.2008 (Annexure-R/1 to the counter-affidavit filed by the respondents) read with the memorandum dated 03.01.2014 (Annexure P18 to the writ petition) and such consideration shall be made within a period of 3(three) months from today, in supercession of the communication dated 01.07.2014 (Annexure-P/23 of the writ petition).

22. In the result the writ petition is allowed to be extent as indicated above. There shall be no order as to costs."

The said decision of the learned Single Judge was tested before the Division Bench and the Writ Appeal was dismissed. The decision was also implemented and the concerned workers have been regularized. The sole distinction sought to be drawn by the State Government that the present petitioners, were engaged after 31.03.2003 in comparison to the other employees, who were regularized, who were engaged before 31.03.2003 is also in the context of the present case not valid. Paragraph-3 of the O.M. dated 21.01.2019 merely provides that there will be a ban on engagement of DRW or Casual or Contingent workers after 31.03.2003 without the concurrence of the Finance Department. This clause cannot be enforced to deny the benefit of the Scheme of regularization in favour of the

petitioners when they were admittedly engaged under centrally funded Scheme. It was not a case where in defiance of the fiscal discipline sought to be imposed by the State Government, the concerned unit or the institute engaged casual workers at its own will. It is a case where under an ongoing centrally funded scheme, the petitioners were engaged for casual work and such casual engagement went on almost unabated for years togather.

In the result, the petition is allowed. Respondents are directed to consider the case of the petitioners for regularization in terms of the Government Schemes dated 01.09.2008 and those made thereafter. If the petitioners are found eligible for regularization, the same shall be granted from the due date. However, the difference in salary would be paid prospectively from today. The entire exercise be completed within 3 (three) months from today.

Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

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