HIGH COURT OF TRIPURA
AGARTALA

WP(C) NO.66 OF 2017

Sri Binoy Bhushan Debnath,
S/o- Sri Brajendra Chandra Debnath,
R/O Vill-Krishnapur, P.O-Krishnapur,
P.S.-Dharmanagar, District-North Tripura.

----Petitioner

Versus

1. **The State of Tripura,**
Represented by its Secretary cum Commissioner,
Department of Food, Civil Supplies and Consumer Affairs,
Govt. of Tripura, P.O.-Kunjaban, P.S.-New Capital Complex,
District-West Tripura.

2. **The Director**, Department of Food, Civil Supplies and Consumer Affairs, Govt. of Tripura, P.O.-Kunjaban, P.S.- New Capital Complex, District-West Tripura.

3. **The Deputy Director**, Department of Food, Civil Supplies and Consumer Affairs, Govt. of Tripura, P.O. and P.S.- Dharmanagar, District-North Tripura.

4. **The Secretary cum Commissioner**, Finance Department, Govt. of Tripura, P.O. and P.S. – New Capital Complex, District-West Tripura.

---- Respondents.

For the Petitioner(s)	:	Mr. A. Bhowmik, Adv.
For the Respondent(s)	:	Mr. D. Bhattacharjee, G.A.
Date of hearing and delivery of Judgment & Order	:	**10.01.2020.**
Whether fit for reporting	:	**YES.**

HON'BLE MR. JUSTICE ARINDAM LODH

J U D G M E N T & O R D E R(ORAL)

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharjee, learned G.A., appearing for the State-respondents.

2. The case of the petitioner, in a nut shell, is that the petitioner was first appointed as fulltime contingent worker under the respondents. The State respondents had adopted a policy under memorandum dated 21.01.2009, wherein a decision was taken to regularise the service of the fulltime DRWs/Casual/contingent workers from the next date of completion of 10 years of service, subject to the eligibility. The policy further stipulates that DRWs/Casual/Contingent workers, who were engaged on a fulltime basis in different departments with or without concurrence of Finance Department, their services also would be considered for regularisation.

3. The petitioner was engaged in the year 1997. From the Column No.9 of the statement showing the name(s) and particular(s) of DRWs/Contingent/Casual/Part-time workers etc., under the Office of the Dy. Director FCS & CA, Transit Godowns, Dharmanagar, North Tripura, it is revealed that the formal order of such engagement of the petitioner was approved by the Finance Department vide memorandum dated 11.08.2004.

4. Mr. Bhowmik, learned counsel has submitted that the Court may consider the said date, i.e., on 11.08.2004, for the purpose of determining the date of engagement of the petitioner as full-time contingent worker. In that circumstance, in terms of the policy dated 21.01.2009, the service of the petitioner should be treated to be regularised w.e.f., 12.08.2014 that is the '***next date'*** of the completion of 10(ten) years of service as full-time contingent worker. The petitioner's name was not initially found in the list prepared by FCS & CS Department, Government of Tripura which compelled him to file a writ petition before this Court. However, during the pendency of the said writ petition, the service of the

petitioner was regularized but the effect of regular pay scale in terms of policy dated 21.01.2009 was not allowed to him which he was entitled to get in terms of the said policy.

5. On the other hand, Mr. Bhattacharjee, learned G.A., has drawn my attention to the statements made in the counter affidavit submitted by the State-respondents, wherein at para-17 they have stated that there was no formal order as well as concurrence of the Finance Department and the name of the petitioner was not found in the Annexure, which was prepared by the Department to ascertain his eligibility for regularisation. More so, for regularisation, the initial engagement must have the concurrence of Finance Department, Government of Tripura and in the case of the petitioner, the financial concurrence was not there.

6. I have heard the learned Advocates appearing for the parties to the *lis* and also considered the submissions in regard to the factual aspects and law relating thereof.

7. The nature of controversy leads this Court to have a look to the relevant portion of the memorandum dated 21.01.2009 which may be reproduced here-in-below:-

> *"The undersigned is directed to inform that the Government has taken a policy decision to regularise services of full-time DRWs/Casual/Contingent Workers* ***from the next date of completion of 10 years of service*** *and fulfill the following criterion as per Department-wise names and particulars attached herewith.*
>
> *(i) DRW/Casual/Contingent workers who were engaged on a full time basis in different Departments with or without concurrence of Finance Department other than Permanent Labourers, Part-time workers Anganwadi Workers and Helpers, Home Guards, Teachers, are Workers engaged under SSA and other Schemes/Programmes, may be considered for regularization as per names attached.....*

> *(v) Subject to fulfilment of above conditions, the eligible workers will be provided pay scale in the relevant post on the following day of completion of 10 years of service (without any break) from the date of joining. In the event of revision of pay scales the revised structure will be followed as per Govt's decision."*

8. A meticulous reading of the aforestated scheme for regularisation, it is aptly clear that the first part of the scheme speaks about regularisation of full-time DRWs/Casual/Contingent workers from the '***next date'*** of completion of ten years of service subject to fulfilment of some criteria.

9. The second part i.e., Para(v) pertains to a provision relating to granting pay scale applicable to the post to which the service of such worker is regularised. It further clarifies in unambiguous terms that such pay scale would be provided to such worker form the '***following day'*** after completion of 10 years of service.

10. For example, if a DRW or Casual or Contingent worker was engaged on 04.07.2005, his 10 years of service would be completed on 04.10.2015 and from the '***next date'*** i.e., from 05.10.2015, he is entitled to be regularised as a regular employee against a post. Further such employee would be provided with a pay scale prescribed for the post from 05.10.2015 i.e., the following day of completion of 10 years of service.

11. In my considered view, the word '***next date'*** and **'*following day'*** embodied in the scheme of regularisation under memorandum 21.01.2009 carry enough significance for providing the benefit of regularisation to the eligible workers under the scheme and the granting of the pay scales as well. In my opinion,

the policy maker of the scheme while formulating the parameter of the scheme have consciously inserted the word ***'next date***' and ***'following day'*** for the purpose of regularisation and for granting the benefit of pay scale to the eligible DRWs/Casual/Contingent workers under the Government.

12. As such, the State-respondents i.e., the enforcing authority of the Government shall provide the benefits to such workers keeping in mind the beneficial object and spirit of this scheme. In my opinion, regularisation rule so framed by the Government must be given a pragmatic interpretation and the benefits provided in the scheme should be granted to such DRWs/Casual/Contingent workers subject to their eligibility under the scheme.

13. Adverting to the present case, the petitioner's engagement as contingent worker was approved w.e.f., 11.08.2004, the date on which his engagement was approved by the Finance Department.

14. Undisputed fact is that there was no break in service. The petitioner completed his 10 years of service from the date of his joining, which was treated as on 11.08.2014. As per the policy dated 21.01.2009, the service of the petitioner is deemed to be regularised with regular pay scale w.e.f., 12.08.2014. But in the instant case, though the service of the petitioner was regularized but he was not given the regular pay scale w.e.f., 12.08.2014 i.e., from the deemed date of his regularisation.

15. The contention of the learned G.A. is that the petitioner's name was not found in the list which was prepared by the FCS & CA Department of the Government of Tripura. In my opinion, this will

not help the State-respondents for the reason that it was the responsibility of the Government to prepare the list of the eligible persons who were entitled to be regularised in pursuance of the policy dated 21.01.2009. His name was not attached to the list and in my opinion, this was not the fault of the petitioner. The relevant records were lying with the respondents. The subsequent action of the State-respondents makes it abundantly clear that the petitioner was eligible to be regularised and his name ought to have been shown in the list the State respondents had prepared for the said purpose. Thus, the petitioner should not suffer for the negligence of the State-respondents in this regard.

16. The submission of the learned G.A. that the service of the petitioner was without the concurrence of the Finance Department also is found to be contrary to the factual aspects of the case. I reiterate, the name of the petitioner was found in the list prepared by the FCS & CA Department, i.e., the respondent No.2 wherein his engagement was approved by the Finance Department vide memorandum Number F.10(22)-FIN(G)/DRW/2004 dated 11.08.2004 i.e., w.e.f., 11.08.2004. In furtherance thereof, the scheme in clear terms envisages that DRWs/Casual/Contingent workers who were engaged on a full time basis in different departments with or without concurrence of Finance Department will be taken into consideration for regularisation.

17. Records reveal that the engagement of petitioner had received financial concurrence w.e.f., 11.08.2004. As such, as per the policy as stated above, the petitioner had completed his 10 years of service on 11.08.2014 and that too with the concurrence of the Finance Department. As such, I repel the submission of learned G.A., that the engagement of the petitioner was made

without concurrence of the Finance Department on that date he was engaged as fulltime contingent worker. Though the petitioner has stated in this writ petition that he was engaged as fulltime contingent workers in the year 1997, but, he has failed to place any material before this Court from which date he was engaged as full time contingent worker in the year 1997. As such, I am not inclined to grant any relief for the period w.e.f., 1997 up to 2004.

18. In such eventuality, I direct the State-respondents to grant regular pay scale to the petitioner w.e.f., 12.08.2014 that is from the following day of his completion of ten years of service. However, it is made clear that the benefit of said pay scale shall be fixed on notional basis for providing pensionary benefit. Such exercise of fixation shall be carried out within a period of eight months from the date of receipt of the copy of this order.

19. The instant writ petition stands accordingly allowed to the extent as indicated above.

JUDGE

S*uhanjit*