HIGH COURT OF TRIPURA
AGARTALA

WA No.36/2018

Sri Biswajait Sarkar,
S/o Sri Dhirendra Kumar Sarkar,
residing at present C/o Sri Abhijit Saha,
Dhaleswar Road No.2, near Katakhal,
P.O. – Dhaleswar, Agartala, West Tripura.

…… *Appellant(s).*

Vs.

1. The State of Tripura,
   represented by the Commissioner-cum-Secretary to the Government of Tripura, Education Department (Higher Education), Agartala.

2. The Director of Higher Education, Government of Tripura, Agartala.

3. The Principal, Polytechnic Institute, now Tripura Institute of Technology, Government of Tripura, Narshinggarh, Agartala.

…… *Respondent(s).*

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HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE JUSTICE MR. S G CHATTOPADHYAY

For Appellant(s) : Mrs. P Dhar, Advocate.
For Respondent(s) : Mr. M Debbarma, Addl. G.A.
Date of hearing : 24th November, 2020.
Date of judgment : 1st December, 2020.
Whether fit for reporting : No.

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(Akil Kureshi, CJ).

This appeal is filed by the original petitioner to challenge the judgment of the learned Single Judge dated 21st September, 2017 passed in WP(C) No.405/2015.

[2] Brief facts are as under :

The petitioner was initially appointed as a Foreman, Electronic & Telecommunication Engineering in the department of Higher Education in the pay scale of Rs.2,200-4,000/- on *ad-hoc* basis on 31st March, 2000. He was posted in Polytechnic Institute. His temporary and *ad-hoc* arrangement continued from time to time. Such arrangement was on the basis that he would have to get selected through Tripura Public Service Commission(TPSC). If he failed to get selected his services would stand terminated. In the year 2005, TPSC advertised various posts including that of the Foreman, Electronic & Telecommunication Engineering. The petitioner applied for the post in question, he was duly selected and thereafter, appointed under a notification dated 13th March, 2006. The petitioner filed the said petition with a prayer that the period of his initial engagement from 31st March, 2000 till he was regularly appointed in March, 2006 should be regularized.

[3] The respondents appeared and filed reply before the learned Single Judge stating *inter alia* that the petitioner was engaged on purely *ad-hoc* and temporary basis for a period of six months with a specific condition that such *ad-hoc* appointment will not result into any benefit in favour of the petitioner and even if the petitioner is appointed on regular basis, such period will not be counted for the purpose of seniority or any other purpose. It was further pointed out that the petitioner had unauthorizedly availed the benefit of pay in the scale of Rs.8,000 – 13,5000/- which was corrected by the employer and recovery was raised. The petitioner challenged the same before the High Court and the writ petition was dismissed.

[4] The learned Single Judge by the impugned judgment held that the petitioner cannot claim any benefit of the temporary period of engagement. Such period cannot be regularized. Following observations may be noted :

> *"4. In the case at hand, the petitioner was initially appointed as Foreman on ad hoc basis with the express conditions that his service was for a period of six months from the date of joining the post and that such ad hoc appointment would not bestow upon him a claim for regularization and that such ad hoc service rendered would not be counted for the purpose of seniority in the grade and for eligibility for promotion, confirmation, etc. What actually in his case, in my judgment, is that he was newly appointed to the post of Foreman on 13-3-2006 on regular basis on the recommendation of*

the TPSC after he underwent due recruitment process. The past services rendered by him on the basis of his ad hoc appointment was never taken into consideration when he was selected by the TPSC after following the process of recruitment under the extant rules. Consequently, the service of the petitioner cannot be regularized from the initial date of his engagement i.e. with effect from 31-3-2000. I have carefully gone through the judgment of this Court in WP(C) No. 476 of 2010 upon which the petitioner places heavy reliance, but that decision was rendered in the context of regularization of the services of the petitioners, who belonged to ST and ST community, who were initially appointed for the post of Lecturers, Polytechnic Institute under special drive by relaxing the qualifying marks prescribed by the AICTE, but the defects in the procedures of their appointment was subsequently cured by the State-respondents after obtaining the approval of the TPSC. Now, how can this case be of any assistance to the petitioner, who was never appointed by special drive recognized by law? No case for retrospective regularization is, therefore, made out by the petitioner calling for my interference."

[5] Appearing for the appellant, Ms. P Dhar, submitted that the petitioner was engaged in the year 2000 after holding a selection process in which he was found most meritorious. The petitioner subsequently applied in response to the selection process undertaken by TPSC, he was duly selected and appointed on regular basis. The intervening period should have been regularized or at least should be counted for the purpose of pensionary benefits post-retirement. She placed reliance on a decision of the learned Single Judge of this Court in case of ***Pankaj Kumar Das Vs.***

State of Tripura and Ors. dated 27th September, 2013 in ***WP(C) No.476/2010***. She also relied on the decision of the Supreme Court in case of ***Mahesh Chandra. Verma Vs. The State of Jharkhand*** reported in ***(2018) 7 SCC 270.*** On the other hand, learned Additional Government Advocate, Mr. M Debbarma, opposed the appeal contending that the learned Single Judge has given cogent reasons for dismissing the writ petition. The petitioner was engaged on purely temporary basis and such period cannot be regularized. Appeal may be dismissed.

[6] The record would suggest the petitioner's initial engagement was under an order dated 28th March, 2000. This was subject to following conditions :

> *"(i) This appointment is purely on temporary basis for a period of 06(six) months from the date of joining.*
>
> *(ii) this ad-hoc appointment will not bestow upon the person a claim for regular appointment and that ad-hoc service rendered would be counted for the purpose of seniority in the grade and for eligibility for promotion, confirmation etc.*
>
> *(iii) The appointee will have to face the Tripura Public Service Commission(T.P.S.C) on the basis of the Notification of advertisement as and when made published by the Commission for selection to the post of Foreman, Electronics & Telecommunication Eng. Polytechnic Institute. This appointment stands automatically cancelled or is deemed to have been terminated form service unless*

he/she is selected by the Tripura Public Service Commission (T.P.S.C).

……..”

[7] Thus the petitioner's engagement was for a fixed period of six months on purely *ad-hoc* basis. It was also made clear that such *ad-hoc* appointment will bestow no regular right of regularization in favour of the petitioner and such period would not be counted for the purpose of seniority or be eligible for promotion, conformation etc. His continuation was conditional on in having been selected by TPSC as and when the post is notified for recruitment. Under such circumstances, the petitioner accepted the engagement and discharged his duties. The post in question requires selection through TPSC. The petitioner's initial engagement in the year 2000 was not through such channel. Any service rendered by him under *ad-hoc* and temporary arrangement cannot be regularized.

[8] The Supreme Court in case of ***Mahesh Chandra. Verma*** (*supra*) was concerned with peculiar situation of services rendered by advocates who were appointed as Fast Track Court Judges by virtue of the judgment of the Supreme Court in case of ***Brij Mohan Lal Vs. Union of India*** reported in ***(2002) 5 SCC 1***. This scheme was, however, disbanded later on upon which the Supreme Court in case of ***Mahesh Chandra. Verma***

(*supra*) intercepted and issued certain directions. In such background, in the case on hand, while granting protection of the past service rendered by such Fast Track Court Judges upon their regular absorption the Supreme Court observed that such Judges were appointed through regular selection process. In case of ***Pankaj Kumar Das***(*supra*), the facts were that the petitioner was appointed in the year 1996 in a special drive to fill up the vacant posts reserved for Scheduled Tribe and Scheduled Casts candidates. It was observed that the selection was made by observing all the principles of public appointment, since TPSC could not be approached for regularizing the petitioners a proposal was placed before the Council of Ministers in the year 2001 which was approved by the Council of Ministers and the matter was placed before TPSC. It was in such background that the learned Single judge held that the petitioner would be entitled to be treated on regular basis with effect from initial appointment. Facts in the present case are vastly different. The learned Single Judge, in our opinion, has committed no error. Appeal is dismissed.

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

(S G CHATTOPADHYAY, J) **(AKIL KURESHI, CJ)**

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