IN THE HIGH COURT OF TRIPURA
A G A R T A L A
WP(C)No.721 of 2018

Sri Subrata Biswas,
son of Sri Sudhir Chandra Biswas,
resident of Village-Maroari Killa,
P.O. Icha Chara, P.S. Kakraban,
District : Gomati Tripura,
PIN : 799105

..... Petitioner(s)

– V e r s u s –

1. The State of Tripura,
represented by the Secretary to the Government of Tripura, Forest Department, Agartala

2. The State of Tripura,
represented by the Secretary to the Government of Tripura, Finance Department, Agartala

3. The Principal Chief Conservator of Forests,
Government of Tripura, Aranya Bhaban,
Pt. Nehru Complex, Agartala,
P.S. East Agartala

4. The Executive Director,
Tripura Forest Development Corporation Limited, Agartala

5. The Managing Director,
Tripura Forest Development and Plantation Corporation Limited,
Registered Office at Abhoynagar, Agartala,
District : West Tripura, PIN : 799005

6. The Divisional Manager,
Forest Corporation Division,
South I Division, Bagafa,
South Tripura

..... Respondent(s)

For Petitioner(s)	**:**	Mr. B. Banerjee, Adv.
For Respondent(s)	**:**	Mr. D. Sharma, Addl. G.A.
Date of delivery of Judgment & Order	**:**	04.01.2020
Whether fit for reporting	**:**	**YES** ✓ / **NO**

BEFORE
HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER(Oral)

Heard Mr. B. Banerjee, learned counsel appearing for the petitioner as well as Mr. D. Sharma, learned Addl. G.A. appearing for the respondents.

2. By means of this petition, the petitioner has urged this court for directing the respondents to regularise his service as the attendent in terms of the memorandum No.F.10(2)-FIN(G)/2008(Part) dated 21.01.2009 [Annexure-2 to the writ petition] and the memorandum under No.F.34(3)-FIN(G)/2012 dated 04.09.2012 [Annexure-3 to the writ petition] within a specified time-frame.

3. Mr. Banerjee, learned counsel appearing for the petitioner has submitted that the petitioner was engaged as the Casual Worker under the Tripura Forest Development and Plantation Corporation Limited (TFDPC Ltd. in short) on 01.06.2002. On such engagement, the petitioner has been discharging the duties and responsibilities of a Group-D employee, even though, he was Madhyamik Passed at the time of his engagement. The petitioner has completed his ten years of service as the Casual Worker, Contingent on 31.03.2012.

4. Mr. Banerjee, learned counsel having referred the memorandum dated 21.01.2009 [Annexure-2 to the writ petition] has contended that a policy had been adopted by the state to regularise DRWs/ Casual/Contingent Workers who were engaged on full-time basis in different departments with or without concurrence of Finance Department other than the Permanent Labourers, Part-time Workers, Anganwadi

Workers, Helpers, Home Guards, Teachers and Workers engaged under SSA and other Schemes/programmes. It has been succinctly provided in the said memorandum dated 21.01.2009 as follows :

> **"The eligible workers will be provided pay scale in the relevant post who has complete 10(ten) years of services (without any break) from the date of joining."**

5. The respondent No.2 issued another memorandum dated 04.09.2012 [Annexure-3 to the writ petition] and by that memorandum, it had been provided further that under the existing policy decision of the state government, full-time DRW/Casual/Contingent Workers, other than Part-Time workers, contractual/ Contract Basis Workers, Honorarium-paid workers, Workers engaged under SSA and other Schemes/Programmes, even if they were engaged with or without prior concurrence of the Finance Department up to 31.03.2003 in the different Department are eligible for regularisation of their services. It was also provided that no DRW/Casual/Contingent etc. workers be engaged after 31.03.2013 without prior concurrence of the Finance Department. It has come to the notice from a decision of this court in Aparna Das versus State of Tripura [Judgment dated 19.12.2019 delivered in WP(C)No.237 of 2018] that the Finance Department had issued another circular under No.F.10(2)-FIN(G)/2008(Part) dated 03.01.2014 on regularisation. In paras-2 and 3 of the said circular dated 03.01.2014, it has been provided succinctly as under :

> **"2. In some Departments, DRW/Casual/Contingent etc. Workers have been engaged with prior approval of Finance Department on full time basis after 31.03.2003 and some of them by this time have completed 10 years of continuous service. In this connection, proposals are being received from different Government Departments for regularisation of the services of such DRW etc workers who are engaged with prior concurrence of Finance Department on full time basis after 31.03.2003 and who had completed more than 10 years of continuous service.**
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> **3. Since the services of DRW etc workers who are engaged prior to 31.03.2003 were regularised on the next date of**

> **completion of 10 years of continuous service under the existing policy decision of the different departments with prior concurrence of Finance Department after 31.03.2003 on full time basis on the next date of completion of 10 years of continuous service like those DRW etc. Workers engaged prior to 31.03.2003."**

6. Mr. Banerjee, learned counsel has further contended that the petitioner was appointed initially without observing the procedure strictly. Thereafter, the Managing Director, TFDPC Limited, the respondent No.5 had written a letter to the Deputy Conservator of Forest (HQs), the respondent No.3 herein, requesting him for approval for regularisation of the petitioner against the available vacant posts. Posts were available in the category of Group-D employee. As the petitioner was engaged before 31.03.2003, the petitioner was well within conditions laid down in the memorandum dated 21.01.2009. Notwithstanding that, no positive response had yielded.

7. Mr. Banerjee, learned counsel has thereafter submitted that one of the five persons whose regularisation was proposed had approached this court to overcome the tactic dilatory, by filing the writ petition being WP(C)No.290 of 2017 titled as **Ranjit Malakar versus State of Tripura and Othe**rs. By the judgment dated 14.07.2017, this court had observed *inter alia* as follows :

> **"10. As there is no dispute that the petitioner was engaged as DRW on 23.07.2004, which day had been categorically admitted by the respondents in para 5 of their reply, the other pertinent point that has emerged in course of the deliberation is as under:**
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> **(i)Whether the petitioner can be regularized in terms of the memorandum dated 21.01.2009 (Annexure R-3 to the reply filed by the respondents).**
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> **In paragraph 5 of the reply, the respondents have taken a stand affirmed by affidavit that even the Finance Department concurred the engagement of the DRWs. On that premise, by the memorandum dated 21.01.2009 those persons can be regularized. However, regarding interpretation, this court will definitely will not be guided by the averments made in the reply. But this is a conscious stand taken by the respondents. That apart, what has been submitted by Ms. Lodh, learned Additional GA that by virtue of the notification dated 21.01.2009 (Annexure R-3**

to the reply), the petitioner"s service cannot be regularized. In this regard, this court in Dharamjit Singha vs. State of Tripura [judgment dated 12.07.2017 delivered in WP(C) 1086 of 2016] has observed as under:

"12.To a query from this court, Mr. Sengupta, learned counsel has fairly admitted that those who were appointed as DRW/Casual/Contingent workers without concurrence from the Finance Department before 31.03.2003 were en bloc regularised. By virtue of the casual employment for more than ten years and for fulfilling all criteria as laid down in the memorandum dated 21.01.2009, the petitioner being in the same class like those who were engaged before 31.03.2003. The question therefore now arises is that when the petitioner was permitted to work for more than ten years and he is still continuing and further that when he has been paid from the government fund whether the respondents can deny his status as the casual employee. In such circumstances, this court would have deemed concurrence from the Finance Department but even if such concurrence is not deemed when the casual employees having the similar background have been considered for regularization, the petitioner has been denied only for his appointment being after 31.03.2003. In the perspective, whether the said cutoff date is rational or not is considered by this court. The government policy is very clear from the said memorandum dated 21.01.2009 where it has been clearly provided that the government has taken a policy decision to regularize the services of the full time DRW/Casual/Contingent workers from the next date of completion of ten years of service.

13. It is evident further that the concurrence of the Finance Department was waived for that class of employees for purpose of age and qualification. The cutoff date therefore according to the respondents has created a special class. It is well settled that unless the cutoff date is shown to be capricious or whimsical, the court does usually provide leeway in favour of the law-makers. But such classification on the basis of that cutoff date shall be founded on an intelligible differentia which distinguishes a person or things that are grouped together from those who are left out of that zone and the differentia must have a rational nexus to the object sought to be achieved by the policy. (In re the Special Courts Bill, 1978 reported in (1979) 1 SCC 380).

14. True it is that the court should not insist on delusive exactness or apply a doctrinaire test for determining the validity of classification in any given case. When the classification is justified, if it is not palpably arbitrary, the principal underlying the guarantee of Article-14 is not that the same rules should be applicable to all persons or that same remedy should be made available to them irrespective of difference of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. It has been clearly held in Special Courts Bill (supra) that : "There should not be any discrimination between one person and another, if as regards the subject matter of the legislation their position is substantially the same."

15. The subject matter of the legislation and the object sought to be achieved can be availed from the memorandum dated 21.01.2009 where it has been clearly stated that the government has taken a policy decision to

regularize the services of the full time DRW/Casual/Contingent workers from the next date of completion of ten years of service. From a reading of the memorandum dated 21.01.2009, it would be apparent that the government has insisted to regularize those persons having the similar status but if anyone is engaged after that day i.e. 31.03.2003, their case could be differentiated if they were not allowed to complete the ten years of service. Even the government has subsequently framed a policy to regularize the part time workers to DRWs on completion of ten years of service much after 31.03.2003. Therefore, the subject matter of the policy is completion of ten years of service in the casual employment. The objective is to achieve regularization for those persons who have completed ten years of service thus. By setting up a cutoff date, the persons having similar status cannot be discriminated.

A welfare government is also bound to give protection of the employment. Cut off date is different subject matter and in different contexts may have substantially different impact. Since the respondents did not contest that the petitioner was allowed to continue as the contingent worker for more than ten years, this court does not find any reason why the benefits as provided by the memorandum dated 21.01.2009 should not be extended to the petitioner as well. A welfare government is not expected to take a hyper technical view. But this court does not find any rationality in setting up of a cut off date for completely banning such casual employment [to a person.] The government has taken a commendable step by giving those casual/contingent employees protection of their service. According to the court, such benefit shall be granted to the petitioner as well. After working for such a long time if a person is thrown out of the job for any reason or even if he does not have the protection of the regularization, it would be a great peril for his dignified survival."

Similar view has also been taken by this court in Ajit Debnath vs. State of Tripura and others [judgment dated 23.06.2017 delivered in WP(C) 1255 of 2016]

11. What is very unique in this case is that, the Corporation in its 143rd Board"s meeting has clearly decided for granting post facto sanction of those engagements, but the Finance Department did not aver anything in this regard. With the counter affidavit filed by those respondents, Note no. 38 given by one Under Secretary of the Finance Department has been annexed alongwith the communication dated 05.07.2017. The said note reads as under:

"The Finance Department regrets its inability to concur the proposal of the department because the Government has not taken any policy decision for regularization of the services of the DRW who are engaged after the cut off date 31.03.2003 and also the Government has not taken any decision for regularization of the services of the PTW who were engaged in the undertaking/PSUs".

12. In the entire reply, this court did not find any averment relating to disposal of the reference made in respect of the ex post facto concurrence by the Finance Department. What the Finance Department has communicated to the Corporation is that in terms of the memorandum dated

> **21.01.2009, the DRWs/Contingent/Casual workers cannot be regularized. The Finance Department has not given the concurrence as urged for despite the fact that the petitioner was being paid by the Corporation from its own fund. This court is really startled by the approach adopted by the Finance Department.**
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> **13. Having regard to these aspects as surfaced from the inquiry, this court is of the view that the ex post facto concurrence be deemed in this case and in terms of the view expressed by this court in Dharmjit Singha (Supra) in respect of the memorandum dated 21.01.2009, the respondents are directed to regularize the service of the petitioner from the next date when the petitioner has completed 10 years of service in the grade where he has been working as DRW. Such decision shall be taken by the respondents within a period of 3(three) months from the date when the petitioner shall submit a copy of this order."**
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> **[Emphasis added]**

The said judgment has been implemented by the Tripura Forest Development and Plantation Corporation Limited by its order under No.F.2-5(579)/ESTT/TFDPC-2018/1393-96 dated 22.05.2018. From the said judgment dated 14.07.2017, it would be further apparent that the petitioner of that writ petition [Ranjit Malakar versus the State of Tripura] was engaged on 23.07.2004 meaning after 31.03.2003. Having referred the precedents in the context, this court had directed the respondents to regularise the service of the petitioner from the next date when the petitioner had completed ten years of service in the grade where the petitioner had been working as DRW.

8. The respondents have however stated that the Finance Department has regretted the proposal of regularisation of services of the petitioner on completion of ten years of service.

9. There is no dispute that the petitioner has been working as the attendant (Casual Worker) by discharging his duties and responsibilities on full-time basis. He has served the respondents more than ten years without break. But the respondents have contended that the petitioner is not entitled to the benefits as claimed. But in their reply, the respondents No.4 and 5 have admitted that the petitioner has

completed 10(ten) years service on 31.05.2012. In para-13 of the reply those respondents have asserted that there is no post of attendant to the Divisional Manager in the Corporation and creation of the post was not initiated by the Corporation.

10. However, Mr. D. Sharma, learned Addl. G.A. appearing for the respondents No.1 to 4 has submitted that the regularisation is not a matter of right. It depends upon the policy of the government. At present, such policies are non-existent as all the memoranda in this regard have been revoked prospectively. That apart, Mr. Sharma, learned Addl. G.A. has submitted that unless approved by the government, the Corporation cannot recruit anyone, even by way of regularisation.

11. Having appreciated the submission of the learned counsel for the parties, this court finds that when the petitioner had completed ten years of service as the attendant on 31.05.2012 he should have been regularised following the policy as reflected in the memorandum dated 21.01.2009 [Annexure-2 to the writ petition], where it has been provided that the department shall take steps for creation of required number posts in the appropriate category including creation of posts [see para (iii)]. But the Corporation or the Administrative Department has not taken such step and thereby have stalled the process. Moreover, this court in **Ranjit Malakar**(supra) has clarified this import of the policy as reflected in the memorandum dated 21.01.2009 and its ramifications. So far this scheme of regularisation is concerned, it is a welfare policy for extending the security by way of regularisation. Thus, the regularisation rules must be given a pragmatic interpretation. In the case of the petitioner, he is well covered by the memorandum dated 21.01.2009 as he was engaged before 31.03.2003 and has completed 10 years of uninterrupted service as the

casual worker. In **Narendra Kumar Tiwari versus State of Jharkhand and Others** reported in **AIR 2018 SC 3589** the apex court had observed, having considered the constitution bench decision in **Umadevi(3)** reported in **AIR 2006 SC 1806** that irregularly or illegally appointing daily rated workers may not be a regular phenomenon in the employment, as that would adversely affect those who could be employed in terms of the constitutional scheme. The concept of one time measure was explained in **Kesari** reported in **(2010) 9 SCC 247**. In **Narendra Kumar Tiwari** (supra) the apex court having taken note of the fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in **Umadevi(3)** is a clear indication that it believes that it was alright to continue with irregular appointments and whenever required, would terminate the service of the irregularly appointed employees on the ground that they are irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and placing the sword of Damocles over their head. This is precisely what **Umadevi(3)** and **Kesari** sought to avoid. Thereafter, in **Narendra Kumar Tiwari** (supra), the apex court had occasion to observe as under:

> **9. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.**
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> **10. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.**

> **11. <u>Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc</u>.**
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> **12. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four months from today on regularisation of the status of the appellants."**
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> **[Emphasis added]**

12. The regularisation rules, as stated, usually be given a pragmatic interpretation and if irregular employee has completed ten years of service and the regularisation scheme was still alive [see the memorandum dated 21.01.2009 [Annexure-2 to the writ petition], the petitioner shall be given the benefit of regularisation as he had completed ten years of service on 31.05.2012, but that was not so done. In the case of **Ranjit Malakar**(supra) considering that the regularisation scheme was alive on the day of his completing ten years of service, this court had directed the respondents to regularise him from the next date when he had completed ten years of service. The respondents were further directed that he should be considered for regularisation within a period of three months from the date when he shall submit a copy of the order. As stated earlier, the respondents have complied that order with all earnestness. Hence, the petitioner cannot be differently treated, as his claim is consolidated by the memorandum dated 21.01.2009.

13. Hence, the respondents are directed to regularise the service of the petitioner from the next day of his completion of ten years of service i.e. 31.05.2012 in a post commensurate to the service he has rendered as the Casual Worker or in a post in the same line or grade and the order in this regard shall be issued within a period of three months from the date when the petitioner shall furnish a copy of this order. The

pay and allowances be accordingly determined in terms of the policy or order as existed during the relevant time.

In terms of the above, this writ petition stands allowed.

There shall be no order as to costs.

JUDGE

HIGH COURT OF TRIPURA
सत्यमेव जयते

Sabyasachi B