

Case No :WP(C) 307/2012

---

Party Name : SRI RANJIT CHOWHAN Vs THE STATE OF TRIPURA & ORS

---

HON"BLE MR JUSTICE U B SAHA

---

The instant writ petition is filed by the petitioner for quashing the Memo dated 07-05-2012 (Annexure-9 to the writ petition) issued by the Director of School Education, Tripura whereby and whereunder the Director of School Education rejected the representation of the petitioner dated 12-12-2011 filed by him in pursuance to the judgment dated 28-06-2011 passed in WP(C) 224 of 2011 for regularization of his service as per the existing schemes of the State Government and also for a direction to provide the pay and allowances for the period from February 2004 to August 2010 during which he discharged his duties. Heard Mr. C.S. Sinha, learned counsel appearing for the petitioner as well as Mr. P.K. Pal, learned State Counsel appearing for the State-respondents. As agreed to by the learned counsel for the parties, the instant writ petition is taken up for final disposal at the admission stage itself. Brief facts needed to be discussed are as follows : The petitioner was appointed on 08-03-1990 as Night Guard under the Education Department, Government of Tripura on contract basis on a consolidated pay of Rs.442.50 paisa per month and while he was working on contract basis, he was given regular scale of pay of Rs.775-1130/- w.e.f. 01-10-1992 instead of the consolidated pay of Rs.442.50 paisa. While the petitioner was enjoying the aforesaid benefit of regular pay scale which he was not entitled to, it was discovered that the regular pay was being paid to him due to mistake and on 05-02-2004, the Director of School Education stopped the payment of his salary on regular pay scale and ordered for recovery of the overpaid amount from his monthly salary. The petitioner challenged the aforesaid order dated 05-02-2004 by way of filing a writ petition being WP(C) 65 of 2004. The aforesaid writ petition was disposed of on 20-05-2004 with a direction to the respondent authorities to recover 50% of the overpayment made to the petitioner from his total emoluments and the remaining 50% from the erring officials. The petitioner filed an appeal against the aforesaid judgment dated 20-05-2004 passed in WP(C) 65 of 2004 and the said appeal was registered as W.A. 24 of 2004. Ultimately, the Division Bench disposed of the aforesaid appeal on 02-08-2010 by setting aside the judgment and order passed by the learned Single Judge with further observation that the petitioner may make application for regularization of his service which may be considered by the State Government on its own merits. In terms of the order dated 02-08-2010 passed by the Division Bench in the aforesaid appeal, the respondent authority concerned vide order dated 19-02-2011 issued the memorandum of compliance of the order. Thereafter, the petitioner again approached the court by filing WP(C) 224 of 2011. The subsequent writ petition filed by the petitioner has also been disposed of by directing the petitioner to submit an appropriate representation to the respondent concerned for consideration of his regularization in any of the existing schemes of the Government and also for payment of his admissible outstanding dues, while in service. The respondent authority concerned, on receipt of such representation, shall consider, if the petitioner can be accommodated under any of the schemes of the Government, for regularization of service, in accordance with law and shall also consider whether the petitioner is entitled to receive such other outstanding dues which would be payable to him during his service period. As the learned counsel for the petitioner in the aforesaid writ petition has prayed for issuing a direction to the respondents authorities to dispose of the representation of the petitioner within the specific time, since the petitioner was no longer in service, the court also directed to dispose of the representation so submitted by the petitioner within a period of three months from the date of receipt of the certified copy of the order. In terms of the direction of the court in WP(C) 224 of 2011, the petitioner has filed one representation on 12-12-2011 requesting the respondents for considering his prayer for regularization and also for passing an appropriate order for payment of pay and allowances for the period from February 2004 to August 2010 and all other service proceeds including GPF, Pension etc. In response to the representation dated 12-12-2011, the Director of School Education passed the impugned order. Being aggrieved by the same, the petitioner has preferred the instant writ petition. The respondents by way of filing counter affidavit stated that in the engagement/appointment letter of the petitioner, it is specifically stated that the petitioner was appointed on 'no work no pay' basis and in the appointment letter, it is also specifically stated that such appointment would not confer any right for regular appointment. It is further contended that the petitioner has already retired from service on 31-08-2010, but nothing has been stated regarding non-payment of the salary for the period from February 2004 to August 2010. Mr. Sinha, learned counsel for the petitioner while urging for quashing the impugned memo, would contend that the service of some other persons similarly situated like the petitioner was regularized by the respondents under the existing schemes, but the case of the petitioner was not considered in terms of those schemes. He further submits that admittedly the petitioner discharged his duties from February 2004 to August 2010 till his date of retirement, but he was not paid the salary for the aforesaid period and the authority also did not say anything regarding such non-payment of salary in the impugned memo. He has again contended that in the impugned memo, the Director of School Education did not give any reason for not regularizing the service of the petitioner. Mr. Pal, learned counsel for the State-respondents, submits that the petitioner is coming to the court again and again raising same question though the authority considered his representation as per direction of this court. Hence, it would be proper to dismiss the instant writ petition being the same is devoid of merit. Having heard the learned counsel for the parties and on perusal of the records available, it appears that the petitioner was provided regular pay scale though he was not entitled to in accordance with law and such payment of salary in the regular scale was stopped by the authority and the authority also passed an order for recovery, but the said order of the authority was ultimately interfered with by the Division Bench and the petitioner was relieved from refund the excess payment received by him. On proper examination of the impugned memo, it appears that the Director of School Education while disposing of the representation of the petitioner dated 12-12-2011 did not consider his prayer for payment of pay and allowances for the period from February 2004 to August 2010. Not only that, in the counter also, the respondents did not make any statement regarding the prayer of the petitioner relating to pay and allowances for the aforesaid period. From the contention made in paragraph 9 of the counter affidavit, it appears that the persons who completed 10 years of service either as DRWs or Contingent workers, their services were regularized under the existing schemes of the government. But the service of the petitioner was not regularized even after completion of about 18 years of service on contract basis. If it is the case of the State-respondents that the person who was engaged on contract basis and have completed more than 10 years of service, they are not entitled for regularization, in that case also it was the duty of the Director of School Education to mention the said reasons in the impugned order, but the same is also absent. When any person enters into service through backdoor, then normally the State should not regularize the service of those persons even under a scheme depriving the unemployed youth who are eagerly waiting for employment facing interview on the basis of the advertisement issued by the authority following the public employment policy. But as in the instant case, the schemes under which the contract services of some of the similarly situated persons were regularized is not before this court, it would not be proper to express any opinion regarding those schemes. It further appears from the record that the petitioner has already been retired from service on 31-08-2010. As the Director of School Education in the impugned memo did not assign any reason as to why the petitioner's service cannot be regularized and as to why he is not entitled to the pay and allowances for the period from February 2004 to August 2010, this court is of considered opinion that it would be proper to quash the impugned memo (Annexure-9 to the writ petition). Accordingly, the impugned memo dated 07-05-2012 is hereby quashed. The Director of School Education, Government of Tripura, respondent no. 2 herein, is directed to reconsider the representation of the petitioner within a period of two months from today and to dispose of the same by a reasoned order after enquiring as to whether the petitioner had really discharged his duties as a Night Guard engaged on contract basis for the period from February 2004 to August 2010 and whether the salary/emoluments for the aforesaid period was paid or not. With the above direction and order, the instant writ petition is disposed of. No order as to costs.