

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**W. P.(C) No.141 of 2015**

- 1. Sri Biken Banik,**  
son of late Aditya Banik,  
P.O. Abhoynagar,  
Kunjaban Colony, Agartala,  
District : West Tripura
- 2. Sri Rakesh Khan,**  
son of late Suraj Khan,  
P.O. Agartla, South Ramnagar, Akhaura Road,  
Agartala, District : West Tripura

.....Petitioners

**- Vs -**

- 1. The State of Tripura,**  
represented by the Secretary, Department of Finance,  
Government of Tripura,  
New Secretariat Building,  
New Capital Complex, Kunjaban,  
P.S. New Capital Complex,  
Agartala, West Tripura, PIN : 799006
- 2. The Principal Secretary,**  
Department of PWD,  
New Secretariat Building,  
P.S. New Capital Complex,  
Agartala, West Tripura, PIN : 799006
- 3. The Engineer-in-Chief,**  
PWD (R & B),  
New Secretariat Building,  
P.S. New Capital Complex,  
Agartala, West Tripura, PIN: 799006
- 4. Tripura Housing and Construction Board,**  
represented by its Chief Executive Officer,  
Gurkhabasti, P.O. Kunjaban, Agartala,  
West Tripura
- 5. The Chief Executive Officer,**  
Tripura Housing and Construction Board,  
Gurkhabasti, P.O. Kunjaban,  
Agartala, West Tripura

.....Respondents

**B E F O R E**  
**THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner : Mr. Samarjit Bhattacharji, Advocate

For the respondents No.1,2 & 3 : Mr. T.D. Majumder, G.A.

for the respondents No. 4 & 5 : Mr. P. Dutta, Advocate

Date of hearing and delivery  
of judgment and order : 30.09.2015

Whether fit for reporting : **NO**

**Judgment and Order (Oral)**

Heard Mr. Samarjit Bhattacharji, learned counsel appearing for the petitioner as well as Mr. T. D. Majumder, learned Govt. Advocate appearing for the respondents No. 1, 2 & 3 and Mr. P. Dutta, learned counsel appearing for the respondents No. 4 & 5.

**02.** The grievance of the petitioners as expressed in this writ petition is that they were engaged as the fixed pay employee on a consolidated pay of Rs.1,470 per month by the memorandum dated 29.01.1992, Annexure P-2 of the writ petition. The petitioners were performing their duties to the entire satisfaction of the competent authority. By the memorandum dated 15.11.2012, the Finance Department circulated a scheme for regularization of the services of the DRWs/ Casual/ Contingent workers of PSUs/other autonomous organisations of the State engaged on full time basis on or prior to 31.03.2003 and on completion of ten years of continuous service.

**03.** There is no dispute that the Tripura Housing and Construction Board recommended the petitioners name for regularisation by their communication, as it would be evident from

Annexure P-6 the list of Contingents/Casual etc. workers under different clauses was approved by the Finance Department. The name of the petitioners appear at serial No.17 & 18.

**04.** Mr. Bhattacharji, learned counsel has submitted that the information contained in the said list is incorrect inasmuch as the petitioners were serving as the Group-C employee but they have shown against as the Group-D posts. For this purpose, he has referred to the terms and condition as available in the memorandum dated 29.01.1992, Annexure P-2 to the writ petition, where it has been provided that:

**ii) The services of the appointee will be governed by the rules of Govt. of Tripura adopted by the Board n regard to leave, travelling allowance and other service matters as are applicable to Group-'C' employee of the Govt. of Tripura.**

**05.** Mr. Bhattacharji, learned counsel appearing for the petitioner submits that the entire consideration was made on wrong premises.

**06.** Mr. T. D. Majumder, learned Govt. Advocate appearing for the respondents No. 1, 2 & 3 has fairly submitted that as per the policy of regularisation DRWs/Casual/Contingent etc. workers who served in the Group-C category have been regularised in the entry post belonging to the Group-C only, unless it appears during the verification that those persons do not have the qualifications as provided in the Recruitment Rules. Mr. Datta Majumder, learned Govt. Advocate has referred clause-4 of the memorandum dated 15.11.2012 where it has been provided that requirement of the educational qualification as per Recruitment Rules will be deemed as relaxed for

regularising of the Group-D post only. In case of DRWs/ Casual/ Contingent etc. workers who are appointed under group-C category, the educational qualification is to be conformed to while considering their cases for regularisation.

**07.** Mr. P. Dutta, learned counsel has submitted that since the petitioners are only class-VIII passed, they cannot be engaged in a Group-C post as per the government policy. As per the Government policy, minimum qualification for Group-C post is Madhyamik (Secondary) passed. Mr. P. Dutta, learned counsel appearing for the respondents No. 4 & 5 has produced the record in terms of the order dated 18.09.2015. He has candidly admitted that there is no Recruitment Rules for the post of Drivers in the Housing Board. Simply on the general policy as followed in the State Government, the petitioners have been regularised in the group-D post for performing the duties of the driver. He has also admitted that even there is no executive instruction laying down the basic minimum qualification for the post of driver and the Tripura Housing and Construction Board. From the records as produced, this court has come across a note dated 03.12.1999 of the Housing Commissioner. The said note has proposed the creation of post for drivers. It clearly appears from the note No.3 dated 03.12.1999 that the Housing Commissioner has proposed the post of driver in Class-III category. For purpose of record, the following part of the said note is extracted :

Class-III post.

- |                     |        |
|---------------------|--------|
| 1. Shri Biken Banik | Driver |
| 2. Shri Rakesh Khan | Driver |

It is, therefore, abundantly clear that the petitioners were engaged on fixed pay basis in the Group-C post.

**08.** The counsel for the petitioner has submitted that for the post of driver, minimum qualification in some organisations and even in the State Government is Class-VIII passed. As the driving is a special skill, the minimum qualification for the other Group-C post, that is Madhyamik (Secondary) passed has not been provided for the post of driver. To support this contention, Mr. Bhattacharji, learned counsel has referred to the memorandum dated 17.12.2012 issued by one of the PSUs of the Govt. Of Tripura namely Tripura Handloom & Handicrafts Development Corporation where a Class-VIII passed person namely Jhantu Bardhan has been appointed as the driver in the Group-C post in the scale of pay of Rs 5,310-24,000 with grade pay of Rs.1800 under the pay band-2. No doubt, that the respondents could not produce any record to show the minimum qualification for appointment in the entry post of driver. It appears further from one communication dated 29.08.2014 Annexure P-12 to the writ petition, addressed to the Chief Executive Officer, Tripura Housing and Construction Board, Agartala, by the Deputy Secretary PWD ( R & B) that the Tripura Housing and Construction Board initiated a proposal for review and to appoint the petitioners as the driver in the Group-C category, in place of the Group-D category. By the said communication dated 29.08.2014, Annexure P-12 to the writ petition, the following decision has been apprised:

**“I am directed to refer your proposal initiated through file No. F.4(19)/THCB/83/Pt-V and to inform you that the issue was processed to the Finance Department, but the proposal of the Department has been regretted.”**

**09.** Having regard to the submissions made by the learned counsel as well as on scrutinising the records so produced before this court, this court could not find any note why and how the Finance Department has regularised fixed pay casual employees who were in the Group-C category in a post under the Group-D. If there is no provision in the Recruitment Rules or in the executive instruction, the clause that has been referred by Mr. T. D. Majumder, learned Govt. Advocate cannot apparently create any obligation. Therefore, this court is satisfied that the petitioner has made out a case for reconsideration. As such, the respondent No.1 and the Secretary, Finance Department, Tripura are directed to reconsider the case of the petitioners having regard to his engagements in the Group-C category as well as the appointment of one Sri Jantu Bardhan made by the Tripura Handloom & Handicraft Development Corporation vide memorandum dated 17.12.2012 Annexure P-13. If according to the general policy of the Government, a person can be appointed in the entry post of the driver having the qualification of the Class-VIII passed then the petitioner shall be appointed as the driver in the Group-C post, but this court cannot give any specific direction, for non-availability of the relevant materials. Thus, the matter is remitted to the Secretary, Finance Department, Govt. of Tripura for reconsideration notwithstanding their decision as communicated by the latter dated 29.08.2014, Annexure P-12 to the writ petition. Such exercise shall be completed within a period of three(3) months from today and the respondents No. 4 & 5 are directed to forward the necessary records including the note as referred.

**10.** With this direction and observation, the writ petition stands allowed to the limited extent as indicated above. There shall be no order as to costs.

Records as produced by Mr. P. Dutta, learned counsel appearing for the respondents No. 4 & 5 are returned.

**JUDGE**

Moumita