

THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) 36 of 2016

Smt. Arati Bhowmik,
wife of Sri Rakesh Debnath,
resident of village: Padmapur, Harichand Road,
P.O. & P.S.: Dharmanagar,
District: North Tripura

..... Petitioner

- Vs -

- 1. The State of Tripura,**
to be represented by the Secretary-cum-Commissioner,
Department of Food, Civil Supplies and Consumer Affairs,
Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District: West Tripura
- 2. The Director,**
Department of Food Civil Supplies & Consumer Affairs,
Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District: West Tripura
- 3. The Sub-Divisional Magistrate,**
Dharmanagar, P.O. & P.S. Dharmanagar,
District: North Tripura
- 4. The Secretary-cum-Commissioner,**
Finance Department, Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex,
District: West Tripura

..... Respondents

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

For the petitioner	:	Mr. A. Bhowmik, Advocate
For the respondents	:	Ms. A.S. Lodh, Addl. G.A.
Date of hearing and delivery of judgment and order	:	31.08.2016
Whether fit for reporting	:	NO

Judgment and Order (Oral)

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner as well as Ms. A.S. Lodh, learned Addl. G.A. appearing for the respondents.

02. By means of this writ petition the petitioner has urged this court to give direction for regularising her service as the Group-D employee with effect from 31.03.2003 in terms of the memorandum dated 31.01.2009 (Annexure-P/6 to the writ petition). Before embarking on the controversy as projected in this case, it would be apposite to note that by the memorandum dated 31.01.2009, the Government has modified their earlier scheme of regularisation of full-time DRWs/Contingent/Casual Workers on completion of 10(ten) years of service. The petitioner has claimed that even though she was appointed as Part-time Worker by the respondent No.3, but she had been discharging the duty for 8(eight) hours altogether. Her engagement as the Part-time Worker was not with concurrence of the Finance Department, but the subsequent extensions since 06.09.1980 were made with concurrence of the Finance Department. It has been further adverted that since inception, the petitioner has been performing the duty for 8(eight) hours a day and thus her service was extracted like full-time Worker. The petitioner has referred a letter dated 09.11.1992 (Annexure-P/2 to the writ petition) of the Sub-Divisional Officer [as he then was] of Dharmanagar, North Tripura addressed to the Director, Food & Civil Supplies, Government of Tripura, Agartala. In the said letter, it has been stated as under:

“Smt. Arati Bhowmik, W/O, Sri Rakesh Debnath, vill-Padmapur of Dharmanagar had been engaged no work no pay basis as sweeper in S.D.O's office (Food Sec) Dharmanagar temporarily w.e.f. 01/07/1989 and till date. She has been continuing her job.

Now Smt. Bhowmik prayed for regularisation of her job. Matter may be taken in to consideration.”

03. Prior to that, on 06.08.1992 similar prayer (Annexure-P/3 to the writ petition) was forwarded to the competent authority, Director,

Food & Civil Supplies, Government of Tripura. Even on 11.10.1993 another prayer of the petitioner (Annexure-P/4 to the writ petition) was forwarded to the Director, Food & Civil Supplies, Government of Tripura by the Sub-Divisional Officer, Dharmanagar. On 17.12.2009 the Sub-Divisional Magistrate, Dharmanagar forwarded the statement in the form (Annexure-P/5 to the writ petition) for regularisation. But the petitioner has not enclosed any such representation with the writ petition. From the memorandum dated 28.12.2013 (Annexure-P/7 to the writ petition), it appears that the petitioner along with other Part Time workers who were engaged for 2 hours/ 3 hours/ 4 hours as Daily Rated Workers (DRW) have been engaged as the DRW, Group-D with direction to perform the similar kind of works. The petitioner, in terms of the said memorandum and without any demur has continued in the service. However, now the petitioner has approached this court for regularisation as the Group-D employee since she has completed more than ten years of service long back. In support of her claim, the petitioner has enclosed the pages of the attendance registers to demonstrate that she signed twice a day as the Part Time Worker for serving the respondents for 8 (eight) hours a day. One paper 'styled as Annexure-B' has been annexed by the petitioner herself in the writ petition wherefrom it is evident that the petitioner was appointed for 2(two) hours a day with concurrence of the Finance Department with effect from 01.07.1989.

04. The respondents by filing the counter-affidavit have seriously disputed the claim of the petitioner and contended that before 01.12.2012 the petitioner was working as the Part Time Worker and in consideration of her service as the Part Time Worker by the memorandum dated 28.12.2013 she has been declared as the DRW with

effect from 01.12.2012. According to the respondents, the petitioner is not covered by the memorandum dated 31.01.2009 (Annexure-P/6 to the writ petition) as the said memorandum applies to the category of employees viz. Full-time DRW/Casual/Contingent workers. The petitioner did not complete 10(ten) years of service as full-time DRW and hence the claim of the petitioner is entirely without any basis. The respondents have also filed a copy of the representation dated 06.12.1995 submitted by the petitioner where the petitioner herself has stated that she was engaged as a Part Time Worker on 2(two) hours basis. However, she had prayed for regularisation of her service on compassionate ground. With leave of this court, the respondents filed one additional affidavit. There the respondents have categorically averred that:

“In all the registers the Petitioner's name was recorded as part time worker for 02 hours only. It is true that in the year 2010 and 2011 register, they have admitted that in the registers of 2010 and 2011 the Petitioner signed twice though she was recorded as part time worker for 02 hours and not a full time employee. Again they have asserted that the petitioner is not entitled to regularisation as prayed.”

05. The petitioner has filed copies of pages of some attendance registers with the writ petition (Annexure-P/9). For the month of November, 2003, this court has noticed that the petitioner signed twice a day which is in contrast to the submission made by the respondents in their additional affidavit and for that reason by the order dated 02.08.2016, learned Addl. G.A. was requested to '*produce the relevant attendance registers as relied by the petitioner in the writ petition on the next date.*' Today Ms. A.S. Lodh, learned Addl. G.A. appearing for the respondents has produced the relevant attendance registers. While compared the relevant pages with the original registers, it sprang a surprise. The shocking surprise that sprang out is that the photocopy

which has been submitted by the petitioner is not tallying with the original register at all. From the original registers it transpired that the petitioner signed only once contrary to the petitioner's claim. Thus, it is clear that the petitioner manipulated or distorted the page for producing the same in the court to derive some undue advantage. This conduct of the petitioner is not only reprehensible but is an act to pollute the stream of justice. Considering that the petitioner is working as a DRW, this court is refraining from taking any stringent action. However, it is recorded by this court that such act cannot be condoned and this court records 'reprimand' against the said conduct of the petitioner. Moreover, what has appeared to this court is that since 25.01.2010, the petitioner has been working for the full-time, as is evident from the communication dated 10.02.2010 of the Sub-Divisional Magistrate, Dharmanagar. For regularisation of the petitioner's service the said date is relevant. The day for purpose of counting the service as the DRW [full-time], has to be counted from 25.01.2010. On completion of 10(ten) years from 25.01.2010, the petitioner shall be considered for regularisation in terms of the Government policy.

07. With this observation and direction, this petition stands disposed of.

There shall be no order as to costs.

A copy of this communication dated 10.02.2010 shall be made part of this writ petition.

JUDGE