

IN THE HIGH COURT OF TRIPURA
AGARTALA

WP(C)580 OF 2015

Sri Subrata Das,
son of Sri Dhirendra Chandra Das,
resident of Village- Barjala,
P.O. Barjala, P.S. West Agartala,
District : West Tripura

.....Petitioner

- Vs -

1. The State of Tripura,
represented by its Secretary cum
Commissioner, to the Department of
Power, Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex,
District : West Tripura

2. The Tripura State Electricity Corporation Limited,
represented by its Chairman cum Managing Director,
Bidyut Bhawan, North Banamalipur,
P.O. Agartala, P.S. East Agartala, District : West Tripura

3. The Senior Manager,
Tripura Electricity Corporation Limited,
Durjoynagar, Electric Sub Division,
P.O. Gandhigram, P.S. New Capital Complex,
District : West Tripura

4. The Secretary-Cum-Commissioner,
Department of Finance,
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.

Ms. R. Purakayastha, Advocate

Date of hearing and
judgment & order : 31.08.2016

Whether fit for reporting : NO

JUDGMENT & 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 respondent Nos. 1 and 4 and Ms. R. Purakayastha, learned counsel appearing for the respondent Nos. 2 and 3.

2. By means of this petition, the petitioner has claimed for regularization as the Group-D Employee in terms of the memorandum dated 21.01.2009, issued by the Finance Department, Government of Tripura, (Annexure P/5 to the writ petition) as according to the petitioner he has been working as the night guard and even though he is shown as the Part-time worker for the same job. The petitioner has relied on a list of DRW/Contingent workers, (Annexure P/1) where the name of the petitioner appears at Serial No. 6 designating him as Part-time worker(Technical). The petitioner also belongs to the Scheduled Cast (SC) category.

3. Mr. A. Bhowmik, learned counsel appearing for the petitioner has placed his reliance on a communication of the Senior Manager, Electric Sub-Division, Durjoynagar under whose control the petitioner has been working as the Part-time worker/contingent worker of 8 hours basis. For purpose of reference, the entire text of the said communication dated 22.03.2011, is extracted hereunder :

"Undersigned would like to inform you that, Sri, Subrata Das, Contingent Worker is performing his duties w.e.f. 01/01/1999 as night guard for more than 8(eight) hrs. More, he is experienced in maintenance of H.T/ L.T. line i/c Distribution transformer and always assist our IT staff as & when required.

So, he is deserve to regular early as belong to SC, category as per system of the government. He is pressing hard to do something for him."

4. Mr. A. Bhowmik, learned counsel appearing for the petitioner has also relied on another communication dated 13.04.2011, (Annexure P/4 to the writ petition) where the Senior Manager has again written that the petitioner has been working as a contingent worker. He is very efficient and experienced worker and is providing very committed service as the night guard. Further Mr. Bhowmik, learned counsel has referred to the communications dated 31.03.2013, 28.02.2014, 31.03.2015 and 17.10.2008 which are annexed to the rejoinder filed by the petitioner. In all these communications though the petitioner has been shown as Part-time worker but with a pertinent comment that he is serving like a full-time worker working regularly for eight hours.

5. Based on those documentary evidence in particular, Mr. Bhowmik, learned counsel has sought to impress this court to allow the writ petition. It is not in dispute that the petitioner is engaged as the night guard. It is not comprehensible how a night guard can work less than eight hours. However, Ms. R. Purakayastha, learned counsel appearing for the respondent Corporation has submitted that the Senior Manager is not authorized to determine the working hour of an employee, if one

employee is engaged as a Part-time worker he is to act as Part-time worker only. If one subordinate officer acts beyond his authority, for that, the principle employer can not be made vicariously responsible. According to Ms. R. Purakayastha, learned counsel the vicarious liability is a concept of limited responsibility to the extent that the principal is liable for any act of the agent, if the agent acts within the authority. Further Ms. R. Purakayastha, learned counsel having relied on a decision of the apex court in **State of Rajasthan and Others versus Daya Lal and Others** reported in **(2011) 2 SCC 429** has submitted that the principles for regularization or parity in pay are well settled. In the Para -12 Daya Lal (supra) the apex court has broadly laid down those principles. For purpose of reference that passage is reproduced as a whole :

"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article [226](#) of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even

temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

[Emphasis added]

Having relied the para 12(iv) of Daya Lal (supra) in particular, Ms. R. Purakayastha, learned counsel has submitted that this court may not pass any direction for regularization of the petitioner. But it has not been disputed by Ms. R. Purakayastha, learned counsel that the memorandum dated 21.01.2009, has been adopted by the Corporation-respondents for purpose of regularization as a fair labour policy. However, the Corporation respondents could not make any response to the statements borne in those communications relied by the petitioner.

6. It is not also in dispute that the petitioner's claim is based on the said memorandum dated 21.01.2009. After perusing

the records produced by the petitioner and the nature of job the petitioner has been discharging as the so called Part-time worker i.e. the night guard as available from Annexure-R/1 to the counter-affidavit of the respondent Nos. 2 and 3, this court cannot hold any other but the view that the petitioner has been working for eight hours as the night guard and the communication/certificate issued by the Senior Manager as quoted above is consistent with the claim of the petitioner that he has been serving for eight hours since 01.01.1999 and thus, the petitioner's case is squarely covered by the policy of the corporation in terms of the memorandum dated 21.01.2009 (Annexure P/5 to the writ petition). It cannot however be denied that simply on relying the nomenclature used against the engagement of the petitioner, the petitioner cannot be brought under the umbrella of the memorandum dated 21.01.2009. But if the nature of engagement is examined carefully, there cannot be any difference of opinion that the petitioner has been working like a full-time worker, known in the common parlance as the full-time DRW. As such, this court is satisfied that the petitioner's engagement has to be treated as the full time DRW, not as the Part-time DRW.

7. The apex court decision which has been relied by Ms. R. Purakayastha, learned counsel can not be applied in the present context, as ordinarily this court does not issue any direction for regularization of service either of the Part-time worker or any other contingent workers. Even the apex court has held time and again that the state as a model employer shall always frame a scheme for regularization of Casual/DRW/Contingent workers so that they

are not denied the fair wage for long and they are provided security of their employment.

8. Having held thus, the respondent Nos. 2 and 3 in particular are directed to regularize the service of the petitioner in terms of the memorandum dated 21.01.2009, (Annexure P/5 to the writ petition) considering his date of engagement on 01.01.1999 within a period of 3 (three) months from the day when the petitioner shall furnish a copy of this order to the respondent No. 2 and release all the benefits as would accrue for such regularization in terms of the memorandum dated 21.01.2009 within the said period.

9. In the result, this writ petition stands allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

Sabyasachi.B