

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.1579 of 2017

W.P.(C) No.1580 of 2017

W.P.(C) No.1581 of 2017

&

W.P.(C) No.1582 of 2017

In W.P.(C) No.1579 of 2017

Petitioner:

Sri Ratan Das,

son of late Haradhan Das, resident of
South Dhaleswar (Vibek Pally), P.O.
Agartala College, District-West Tripura,
PIN-799004

By Advocate :

Mr. P. Maishan, Advocate

- V e r s u s -

Respondents :

1. **The Union of India,**
to be represented by the Secretary,
Ministry of Human Resource Development
Department, Government of India, 127-C,
Shastri Bhawan, New Delhi
2. **The Vice Chancellor,**
IGNOU, Maidan Garh, New Delhi-110068
3. **The Registrar,**
Regional Service Division [RSD], IGNOU,
Maidan Garh, New Delhi-110068
4. **The Registrar,**
Material Printing and Distribution Division
[MPDD], IGNOU, Maidan Garh, New Delhi-
110068
5. **The Section Officer,**
IGNOU, Agartala Regional Centre, MBB
College, Science Block, Agartala, West
Tripura, PIN-799004
6. **The Regional Director,**
IGNOU, Agartala Regional Centre, MBB
College, Science Block, Agartala, West
Tripura, PIN-799004

By Advocate :

Mr. H. Deb, Asstt. S.G.
Mr. Biswanath Majumder, CGC

In W.P.(C) No.1580 of 2017

Petitioner:

Sri Soman Bhattacharjee,
son of late Rathindra Chandra
Bhattacharjee, resident of West
Pratapgarh, Near Masjid, Pratap
Sangha Club, Agartala, P.O. A.D.
Nagar, District-West Tripura, PIN-
799001

By Advocate :

Mr. P. Maishan, Advocate

- V e r s u s -

Respondents :

1. **The Union of India,**
to be represented by the Secretary,
Ministry of Human Resource Development
Department, Government of India, 127-C,
Shastri Bhawan, New Delhi
2. **The Vice Chancellor,**
IGNOU, Maidan Garh, New Delhi-110068
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Maidan Garh, New Delhi-110068
4. **The Registrar,**
Material Printing and Distribution Division
[MPDD], IGNOU, Maidan Garh, New Delhi-
110068
5. **The Section Officer,**
IGNOU, Agartala Regional Centre, MBB
College, Science Block, Agartala, West
Tripura, PIN-799004
6. **The Regional Director,**
IGNOU, Agartala Regional Centre, MBB
College, Science Block, Agartala, West
Tripura, PIN-799004

By Advocate :

Mr. H. Deb, Asstt. S.G.
Mr. Biswanath Majumder, CGC

In W.P.(C) No.1581 of 2017

Petitioner:

Sri Binoy Krishna Das Gupta,
son of late Bimal Das Gupta, resident
of Milanchakra, Near CNG Station, Opp.
Side of Doordarshan Kendra, P.O. A.D.
Nagar, Agartala, Tripura (W),
PIN-799003

By Advocate :

Mr. P. Maishan, Advocate

- V e r s u s -

Respondents :

1. **The Union of India,**
to be represented by the Secretary,
Ministry of Human Resource Development
Department, Government of India, 127-C,
Shastri Bhawan, New Delhi
2. **The Vice Chancellor,**
IGNOU, Maidan Garh, New Delhi-110068
3. **The Registrar,**
Regional Service Division [RSD], IGNOU,
Maidan Garh, New Delhi-110068
4. **The Registrar,**
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College, Science Block, Agartala, West
Tripura, PIN-799004
6. **The Regional Director,**
IGNOU, Agartala Regional Centre, MBB
College, Science Block, Agartala, West
Tripura, PIN-799004

By Advocate :

Mr. H. Deb, Asstt. S.G.
Mr. Biswanath Majumder, CGC

In W.P.(C) No.1582 of 2017

Petitioner:

Smt. Anugatamani Akhanda,
wife of Dr. Bhusan Ch. Das, resident of
Quarter Type-4, Lake View Quarter
Complex, MBB College Complex,
Agartala, P.O. Agartala College,
District- West Tripura

By Advocate :

Mr. P. Maishan, Advocate

- V e r s u s -

Respondents :

1. **The Union of India,**
to be represented by the Secretary,
Ministry of Human Resource Development
Department, Government of India, 127-C,
Shastri Bhawan, New Delhi
2. **The Vice Chancellor,**
IGNOU, Maidan Garh, New Delhi-110068
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6. **The Regional Director,**
IGNOU, Agartala Regional Centre, MBB
College, Science Block, Agartala, West
Tripura, PIN-799004

By Advocate :

Mr. H. Deb, Asstt. S.G.
Mr. Biswanath Majumder, CGC

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

Date of hearing and delivery of Judgment & Order : **31.01.2018**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

Heard Mr. P. Maishan, learned counsel appearing for the petitioners as well as Mr. H. Deb, learned Asstt. S.G. of India assisted by Mr. Biswanath Majumder, learned counsel appearing for the respondents.

[2] These writ petitions being W.P.(C) No.1579 of 2017 [Sri Sri Ratan Das vs. the Union of India & others] and W.P.(C) No.1580 of 2017 [Sri Soman Bhattacharjee vs. the Union of India & others], W.P.(C) No.1581 of 2017 [Sri Binoy Krishna Das Gupta vs. the Union of India & others] and W.P.(C) No.1582 of 2017 [Smt. Anugatamani Akhanda vs. the Union of India & others] are consolidated for disposal by a common judgment inasmuch as a common question wades through all these petitions.

[3] The petitioners were engaged by Indira Gandhi National Open University, the IGNOU in short, Agartala Regional Centre as the daily wage staff. According to the petitioners, they have served in the said capacity for less or more than 5[five] years, but now the authority has taken a drive to disengage them.

[4] Mr. Maishan, learned counsel appearing for the petitioners has strenuously argued that the fact of their satisfactory service has been admitted by the Regional Director in his letter dated 21.07.2014 addressed to the Pro-Vice Chancellor, IGNOU, New Delhi. In the said letter, the Regional Director, in-charge, while responding to the query from the Pro-Vice Chancellor, IGNOU has written that the daily wage staffs were enthused about the visit of the Pro-Vice Chancellor and had requested him to bring to her notice, the number of years of service which they have contributed on overall growth of the Regional Centre. In their perspective, he has given the particulars of 3[three] daily wage staffs in the said letter. Mr. Maishan, learned counsel has referred a passage from the said letter dated 21.07.2014 which reads as under:

"As per Circular No.805 signed by the Registrar of Administration Division on January 1st, 2007, the Number of posts which are yet to be filled up by Regular appointment in Agartala RC are 1 post of Senior Assistant, 1 post of PA-II, 1 post of Stenographer, 2 post of Assistant, 2 post of Junior Assistant cum-Typist & 1 post of Attendant. In the month of February, 2014, the DEO resigned for better prospects and hence 1 post of DEO [now redesigned as A.E.(D.P)] is also vacant. The 3 afore-mentioned staff may be considered for a suitable post out of the 9 vacant posts."

This is the basis on which the petitioners have filed these writ petitions seeking directions on the respondents to regularise the services of the petitioners in terms of the memorandum dated 19.12.2016, Annexure-5 to the writ petitions. For purpose of reference, the said office memorandum is extracted hereunder:

**"No.A.11017/11/2011-FG
Government of India
Ministry of Finance
Department of Expenditure
(EG Branch)**

**North Block, New Delhi
Dated 19th December, 2016**

Office Memorandum

Subject: Conversion of temporary posts into permanent ones upto the level of Deputy Secretary in Ministries/Departments-Review of instructions contained in O.M. dated 24.03.1976

The undersigned is directed to refer to O.M. No.A-11019/6/75-EG-I dated 24.03.1976 vide which instruction regarding conversion of temporary posts into permanent ones upto the level of Deputy Secretary in Ministries/Departments, were issued.

2. Keeping in view the conceptual changes in the field of creation of posts occurred over this period, it has been decided to review existing temporary posts upto the Deputy Secretary level in Ministries/Departments and allow their conversion into permanent ones as a one time measure. Accordingly, all financial Advisers are directed to carry out a comprehensive review exercise of all existing temporary posts upto the Deputy Secretary level available in their respective Ministers/Departments/Subordinate/Attached Officers/Autonomous Organisations/Societies under their charge and issue specific orders for conversion of these temporary posts into permanent ones subject to the condition that these posts have functional justification and are in existence for more than three years.

3. This exercise has to be completed in a time frame of 3 months from the date of issue of this O.M. i.e. upto 19th march, 2017. A compliance report of the same is to be intimated to Department of Expenditure invariably along with details of posts and copy of orders issued in this regard.

4. This issues with the approval of Finance Secretary.

**Sd/
Illegible
(Annie George Mathew)
Joint Secretary to the Govt. of India
[Tel:23095648](tel:23095648)**

All Financial Advisers of Ministries/Departments as per standard list."

[5] From reading of the said memorandum dated 19.12.2016 it clearly surfaces that this memorandum is regarding conversion of the temporary posts into permanent ones up to the level of Deputy Secretary in Ministries and Departments. Hardly, the memorandum carries any relevance for purpose of regularisation of the petitioners. However, Mr. Maishan, learned

counsel appearing for the petitioners has referred the office memorandum under No.7-10/2016-PCC dated 31.03.2017, Annexure-15 to the writ petition, issued by the Ministry of Communications, Department of Posts where it has been provided that:

"rate of remuneration payable to Full Time Casual Labour (Other than Temporary Status)/Part Time Casual Labour/workers engaged on contingency basis w.e.f. 01.01.2006 was issued. The para Nos.1(i) & (ii) of ibid OM have been examined for revision of remuneration payable to these casual labourers w.e.f. 01.01.2016 in consultation with DoP&T and the DoP&T has clarified that:

'...minimum pay for calculation of pay of casual labourers (without temporary status) may be considered as the minimum pay of Level 1 of the Pay Matrix as per the recommendations of 7th Pay Commission i.e. Rs.18,000/-.' "

[6] This memorandum is also in respect of the minimum pay of the casual and part time wage-based labourers. The petitioners have urged this court to direct the respondents to pay them the minimum pay of ₹18,000/- per month till their regularisation. Incidentally, the said memorandum has been issued by the Ministry of Communications, Department of Post, Government of India having referred to a Finance Department's memorandum. This court has not been made aware whether the said policy of the Finance Department can be applied in the IGNOU or the IGNOU is required to take independent decision or not, but so far the minimum wage is concerned, it appears to this court that as the Central Government Educational Institution, the Finance Department's memorandum would govern the said institution, but subject to acceptance by the authority in the

IGNOU. Mr. Maishan, learned counsel appearing for the petitioners has quite emphatically asserted a case of legitimate expectation of the petitioners for their regularisation on the basis of the said memorandum dated 19.12.2016, Annexure-5 to the writ petitions, as reproduced above. Further, Mr. Maishan, learned counsel having referred to the decision of the apex court in **Confederation of Ex-Servicemen Associations and others vs. Union of India and others**, reported in **(2006) 8 SCC 399** has contended that on the doctrine of legitimate expectation, this court can direct the respondents to regularise the services of the petitioners. Mr. Maishan, learned counsel has referred the following passage from **Confederation of Ex-Servicemen Associations** (*supra*):

"33. We are also not impressed by the argument that all medical benefits and facilities must be provided to ex-servicemen under the doctrine of 'legitimate expectation'. The doctrine of 'legitimate expectation' is a 'latest recruit' to a long list of concepts fashioned by Courts for review of administrative actions. No doubt, the doctrine has an important place in the development of Administrative Law and particularly law relating to 'judicial review'. Under the said doctrine, a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit. In such situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable grievance in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has enjoyed all throughout. Such expectation may arise either from the express promise or from consistent practice which the applicant may reasonably expect to continue."

[Emphasis added]

[7] On a query from this court, Mr. Maishan, learned counsel appearing for the petitioners has failed to show any consistent practice or an expressed promise in respect of the

regularisation. To take his analogy further, he has referred another decision of the apex court in **Yash Pal and others vs. Union of India and others**, reported in **(2017) 3 SCC 272** in which decision the apex court has framed the direction in the following manner:

"16. During the course of the hearing, the learned Additional Solicitor General indicated that the formulation of a proposal for regularization is under consideration. It has also been stated during the course of the submissions that the proposal may envisage regularizing the army porters who have rendered service for a stipulated period upto five per cent of the sanctioned strength of multi-tasking staff. Since the pool of porters is large, the number of persons who may benefit from such a proposal every year may be minimal. This is an aspect which should be duly borne in mind while enhancing the proportion of the sanctioned strength for regularization; in order that the benefit of security of tenure is made available to a reasonable proportion of persons who complete a stipulated minimum tenure of service. The competent authority will consider this aspect while taking a decision in the matter."

This court has failed to understand how this decision would support the petitioners' case so far the doctrine of legitimate expectation is concerned *Lord Denning*, in his inimitable words in **Schmidt vs. Secy. of State**, reported in **(1969) 1 All ER 904** has laid his discourse on the aspect of legitimate expectation. In a later decision *Lord Fraser*, in **Attorney General of Hong Kong v. Ng Yuen Shiu**, reported in **(1983) 2 All ER 346** had observed as under:

"The expectations may be based on some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry."

[8] The concept of the legitimate expectation is always an equitable extension for the judicial review by the constitutional court or a court of equity. Be that as it may, in the present case

there cannot be any amount of doubt in the mind of the court that if the petitioners are disengaged they will face the extreme hardship in their life, but this court is constrained to observe that they have failed to make out any case in which the court can interfere and direct the respondents to regularise their service or at least to extend and protect their tenure inasmuch as they are purely daily wage based workers.

[9] Mr. H. Deb, learned Asstt. S.G of India appearing for the respondents has pointed out that another batch of writ petitions seeking regularisation filed by the similarly circumstanced workers of the IGNOU has been dismissed by this court. It is needless to say that the competent authority may frame the scheme for accommodating the daily wage-based workers in the regular establishment. But for that, this court cannot issue any direction in this regard. It is left to the discretion of the executive to consider humanely.

[10] In terms of the above, these writ petitions are dismissed.

There shall be no order as to costs.

JUDGE

Sujay