

**HIGH COURT OF TRIPURA
AGARTALA**

WP (C) No. 1743 of 2017

Pradip Kumar Das

-----Petitioner(s)

Versus

The State of Tripura & Ors.

-----Respondent(s)

**Connected with
WP (C) No. 1744 of 2017**

Tapas Das

-----Petitioner(s)

Versus

The State of Tripura & Ors.

-----Respondent(s)

**Connected with
WP (C) No. 01 of 2018**

Bidhan Das

-----Petitioner(s)

Versus

The State of Tripura & Ors.

-----Respondent(s)

For Petitioner(s)	:Mr. G. K. Nama, Adv.
For Respondent(s)	:Mr. D. Sarkar, Adv. Mr. P. B. Chakma, Adv.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

28/09/2018

Heard Mr. GK Nama, learned counsel appearing for the petitioners as well as Mr. D Sarkar and Mr. PB Chakma, learned State counsel appearing for the respondents.

All these writ petitions being WP(C)1743/2017 (Pradip Kumar Das Vs. The State of Tripura & Ors.), WP(C)1744/2017 (Sri Tapas Das vs The State of Tripura & Ors.) and WP(C) 01/2018 (Sri Bidhan Das vs. State of Tripura & Ors.) are combined for disposal by a common judgment as these writ petitions are set up the similar perspective fact, interfaced with a common question of law. Moreover, learned counsel for the parties are in consensus that these writ petitions are squarely covered by a decision of this Court in ***State of Tripura and Ors., Vs.***

Tribal Engineers' Society, Tripura & Ors.[judgment dated 10.08.2015 delivered in WA 67/2014].

The petitioners, being Pradip Kr. Das and Bidhan Das were appointed as Junior Engineer (Civil), Gr-I under the Public Works Department, Government of Tripura on promotion to officiate as Assistant Engineer (Civil) on ad hoc basis initially for a period of six months in the scale of pay of Rs.2100-5000 from the date of their taking over/assumption of the charge by the office order under No. F.6(35)-PWD(E)/92 dated 29.01.1996 (Annexure-1 to the writ petitions being WP(C)1743/2017 and WP(C) 01/2018) whereas the other writ petitioner, namely, Tapas Das was similarly appointed by the Officer order under No.F.6(35)-PWD(E)/92 dated 14.02.1996 (Annexure-1 to the writ petition being WP(C)1744/2017).

There is no controversy that all the writ petitioners continued as ad hoc appointee in the post of Assistant Engineer (Civil) till 14.07.2006 when, by the notifications under No. F.6(35)-PWD(E)/92 the petitioners were substantively appointed on promotion in Grade-IV, TES [Assistant Engineer (Civil)].

The petitioners, namely Bidhan Das and Tapas Das were substantively appointed on promotion to the post of Assistant Engineer (Civil), TES (Gr-IV) on regular basis under the Public Works Department whereas the petitioner, namely, Pradip Kr. Das was substantively appointed on promotion to TES (Gr-IV), Assistant Engineer (Civil) in Public Works Department with prospective effect by the notification under No. F.6(35)-PWD(E)/92 dated 03.10.2008. However, in the said notification dated 03.10.2008 itself, the following note is attached:

"2. Sri Pradip Das, Assistant Engineer on ad hoc basis to TES (Gr-IV), (Civil) now posted in the office of the Superintending Engineer, 5th circle, Ambasa is hereby appointed to TES (Gr-IV) (Civil) on regular basis in the same office w.e.f. 14.07.2006 keeping his seniority above Sri Heramba Sakar (Seniority Sl. No. 240) and below Sri. Jagadish Das (Seniority Sl. No. 252)."

Therefore, all the petitioners were given the substantive promotion w.e.f. 14.07.2006. Now the petitioners, by means of these writ petitions, have urged this Court that they should be regularized from the date of their engagement on ad-hoc basis.

Mr. Nama, learned counsel appearing for the petitioners has submitted that in view of the law laid down by the Apex Court in ***Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others***, reported in ***AIR 1990 SC 1607*** and since the petitioners have continued in their ad hoc engagements continuously for 14 years, they have claimed to be regularised from the day of their ad-hoc engagements. The said engagements be treated as stop gap arrangement. On applying the ratio of ***Direct Recruit Class-II Engineering Officers' Association and others*** (supra) the petitioners are entitled to be regularized and their officiating service is liable to be counted as the regular service. In this regard, Mr. Nama, learned counsel has further submitted that this case is covered by a decision of this Court in ***Tribal Engineers' Society, Tripura & Ors*** (supra) where this Court has observed as under:

"[3] In our opinion, this dispute is squarely covered by the judgment of the Apex Court in the Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others, reported in AIR 1990 SC 1607. In that case, the Apex Court dealt with the issue as to whether ad-hoc service rendered by an employee is to be counted while considering his service for all intents and purposes and if so, under what circumstances.

[4] We may refer to sub paras-A & B of Para-44 of the judgment which read as follows:

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

[5] The case of the State is that the writ petitioners were appointed de hors the rules. According to the State, the promotions were made in an ad-hoc fashion without following the rules. Even this situation is covered by sub para-B of Para-44 of the said decision of the Apex Court. According to the learned Advocate General, the case of the State is squarely covered by sub para-A of the said decision especially the corollary thereto since the promotion of the writ petitioners on ad-hoc basis was made de hors the rules. Sub para-A of Para-44 clearly indicates that ad-hoc service is normally not to be counted for any purpose, especially when it is made against the rules. The corollary relied upon by the learned Advocate General only clarifies this issue by saying that where the initial appointment is only ad-hoc and the said appointment is not in accordance with the rules and further that the said appointment is a stop gap arrangement, the officiation in such post cannot be taken into account for considering his seniority."

Since, the petitioners did not approach this court earlier, the same benefit could not be extended to them. However, those who approached this Court all these benefits, have been given to them. Mr. Nama, learned counsel has further submitted that since the ad-hoc engagements were not stop-gap arrangement, the officiating service will be counted as the regular service for all purposes.

From the other side, Mr. Sarkar and Mr. Chakma, learned State counsel appearing for the respondents have submitted in unison that these writ petitions suffer from laches and the claim has become stale. As such, this court should not entertain this writ petition. That apart, Mr. Sarkar, learned counsel has further submitted that continuation of the ad hoc engagement, even for a longer time, does not give right to such persons who had held the post on ad hoc engagement to claim, as a matter of right, that the entire period under ad hoc engagement be counted towards regular service.

Having appreciated the rival submissions, this Court has compared the fact and circumstances of the judgment delivered in ***Tribal Engineers' Society, Tripura & Ors*** (supra) and the present writ petitions. Sans some insignificant variations in the fact, the cases

are circumstanced similarly. Thus, this Court does not have any reservation or reluctance to hold that:

(i) The ad hoc appointments/engagements, though not made according to the rules, continued uninterruptedly for 14 years till the services of the writ petitioners were regularized in the year 2006;

(ii) The ad hoc appointments/engagements were not a stop gap arrangement because there cannot be any stop gap arrangement which continues for 14 long years; and

(iii) The explanation given by the State that it could not make regular appointment due to pendency of the writ petition is a fallacious argument in view of the law laid down in **Direct Recruit Class-II Engineering Officers' Association and others** (supra) and the petitioners are entitled to get their officiating service on ad hoc appointment counted towards their regular service.

Accordingly, the respondents are directed to count the period of ad hoc appointments/engagements commencing from 29.01.1996 for the petitioners, namely, Bidhan Das and Pradip Kr. Das and from 14.02.1996 for the petitioner, namely, Sri Tapan Das till their substantive appointment w.e.f. 14.07.2006 towards their regular service for all purposes.

In the event, there arises any financial liability, the actual payment shall be restricted to a period of three years preceding the date of institution of the writ petitions. In the remaining period the pay and allowance shall be fixed notionally without any financial benefit since the petitioners have approached this Court after a long time, even though these writ petitions have been entertained as the financial deprivation is perennial.

In terms thereof, all the writ petitions are allowed and accordingly, disposed of.

There shall be no order as to costs.

JUDGE