

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)No.191 of 2018

Sri Dhananjoy Jamatia,
Junior Engineer Grade-I(Civil),
Department of Agriculture, Government of Tripura,
Agartala, West Tripura

----Petitioner(s)

Versus

1. The State of Tripura,
represented by the Secretary to
the Government of Tripura,
Agriculture Department, New Secretariat,
P.O. New Capital Complex, Agartala, West Tripura

2. The Director of Agriculture,
Government of Tripura, Akhaura Road,
Agartala, West Tripura

---- Respondent(s)

For Petitioner(s)	:	Mr. D.K. Biswas, Adv.
For Respondent(s)	:	Mr. D. Sharma, Addl. G.A.
Date of delivery of Judgment & Order	:	20.12.2019
Whether fit for reporting	:	NO

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

Judgment & Order(Oral)

Heard Mr. D.K. Biswas, learned counsel appearing for the petitioner as well as Mr. D. Sharma, learned Addl. G.A. appearing for the respondents.

2. By means of this writ petition, the petitioner has urged this court to direct the respondents to regularize his service with effect from 28.12.1992 inasmuch as by the office order No.F.2(37)-Agri/Estt/90/93, the petitioner was engaged as Junior Engineer (Civil) Grade-I on ad-hoc

basis. In terms of the said order, the petitioner joined in the service on 28.12.1992. The petitioner had admittedly continued as the ad-hoc appointee till 30.07.2004 when the petitioner's service was regularized in terms of the concurrence received from the Tripura Public Service Commission [TPSC, in short] vide the office order No.F.2(45)-Agri/Estt/01-02/11833-872 dated 29.01.2005. When the proposal for granting the petitioner the benefit of Career Advancement Scheme [CAS] was sent to the Finance Department for their views on whether the petitioner is entitled to get the benefit of CAS-I, the Finance Department clarified that only the regular service can be counted towards grant of the scale up-gradation under CAS. This was informed to the petitioner by the letter No.F.2-8486(P)/219-44 dated 12.04.2006. In this perspective, the petitioner claimed his regularization retrospectively with effect from 28.12.1992 converging the ad-hoc service. In this regard, the petitioner has relied on a decision of this court in **Haridhan Das versus State of Tripura** [the common judgment dated 29.11.2016] where this court had occasion to observe as follows :

"5. The respondents by filing the reply, did not dispute that the petitioners are/were the similarly circumstanced that of the Assistant Engineers who approached this court by filing the writ petitions being WP(C)No.301 of 2006, out of which W.A.No.67 of 2014 arose. The respondents have raised objections contending that the Direct Recruit Class-II Engineering Officers' Association and Others, reported in AIR 1990 SC 1607 based on which the judgment and order dated 10.08.2015, Annexure-2 to the writ petition has been passed, has clearly laid down that if the initial appointment is not made in accordance with the rules, but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted. Notwithstanding that since that judgment is related to the direct recruitment, that principle cannot be applied to the promotee. As astounding as be it may, it was the submission from the state.

6. This court is unable to accept such analogy which is grossly against the legal principle as curved out in Direct Recruit Class-II Engineering Officers' Association (supra) by the apex court.

7. Having scrutinized the records, this court finds that all the writ petitions are covered by the judgment dated

10.08.2015, delivered in W.A. No.67 of 2014 [The State of Tripura and Others versus Tribal Engineers' Society, Tripura and Others], Annexure-2 to the writ petition. Therefore, all the writ petitioners are entitled to receive similar benefit as has been extended by this court to the writ petitioners in WP(C)No.301 of 2006. Thus the respondents are directed to count the officiating service of the petitioners with their service in the regular establishment, meaning that the period of service rendered by the writ petitioners since their appointment on ad-hoc basis till regularization by the office order dated 14.07.2006, Annexure-1 to the writ petition, shall be treated as part of their regular service for all purposes, as the petitioners have occupied the post of Assistant Engineer (Civil) on officiating basis uninterruptedly till they were appointed on regular basis in the post of Assistant Engineer (Civil) borne in the Grade-IV of the Tripura Engineering Service by the order dated 14.07.2006, Annexure-1 to the writ petition."

3. Mr. D.K. Biswas, learned counsel appearing for the petitioner has contended that though the petitioner is working in the Department of Agriculture but the principle, as laid down in **Haridhan Das versus State of Tripura**, is equally applicable in the case of the petitioner.

4. Mr. D. Sharma, learned Addl. G.A. appearing for the respondents in order to repel the submission of Mr. Biswas, learned counsel appearing for the petitioner has drawn attention of this court to the part of Para-9 which reads as under :

"Sri Dhananjoy Jamatia, the petitioner completed his B.Tech (Agri Engineering) course as a Departmental sponsored candidate. But at that time there is no "Recruitment Rules" for recruitment of Degree holder Engineers & thus an initiative was taken as per F.D. Office Memorandum : No.F.4(40)-FIN(PC)/90 dated 12.09.91 for amendment of R.R. for the post of Junior Engineer. In the meantime, against the departmental vacancy available at the relevant point of time, the petitioner was appointed along with three other vide Departmental Office Order No.F.2(37)-Agri/Estt/90-93 dated 23.12.92 as Junior Engineer (Civil) Gr-I on "Ad-hoc basis" & the petitioner joined on 28.12.92. Subsequently, the ad-hoc service of the petitioner was regularized w.e.f. 30.07.2004 with the concurrence of the T.P.S.C. vide Departmental Office Order No.F.2(45)-Agri/Estt/01-02/11833-872 dated 29.01.2005."

5. Mr. Sharma, learned Addl. G.A. has further contended that at the relevant point of time when the petitioner was engaged in the post of Junior Engineering (Civil) Grade-I under the Department of

Agriculture, there was no recruitment Rules. Thus, there was no scope of appointing the petitioner on regular basis and hence, the said ad-hoc service could not be regularized. The petitioner occupied the post of Junior Engineering (Civil) Grade-I on ad-hoc basis interruptedly till he was regularized by virtue of the office order dated 29.01.2005 [Annexure-2 to the writ petition]. Thus, the opinion of the Finance Department as reflected in the order dated 12.04.2006 [Annexure-3 to the writ petition] cannot be faulted with.

6. To buttress his contention, Mr. Sharma, learned Addl. G.A. has relied on a larger bench decision of Jharkhand High Court in **Bholanath Hansda versus State of Jharkhand etc.** [judgment dated 16.06.2017 delivered in WP(C)No.4110 of 2013]. In **Bholanath Hansda**(supra) a decision of the apex court in **Dhyan Singh versus State of Harayana** reported in **2002(2) SCC 656** was referred where it has been succinctly held that no part of service rendered as supervisor under Adult Education Scheme could be counted either for the purpose of deciding the pensionary benefit and even fixation of salary in the scale of pay can be done once they are regularly absorbed. It has been further observed that continuance/engagement of the appellants under the specific scheme cannot be held to be an employment under any establishment of the government. Following that principle, in **Bholanath Hansda**(supra) it has been held as under :

"46. We accordingly hold and answer the reference in the following terms:-

None of the employees/petitioners are entitled to count their past services under the Adult Education/Non-formal Education/Mass Education scheme for the purpose of their pensionary benefits. This principle would apply to all the 3 broad categories of petitioners enumerated in the opening paragraph of the writ petition i.e.

(i) those employees/petitioners who after being declared surplus have either retired or died before they were absorbed pursuant to the notification dated 30.05.2007;(ii) the second category of petitioners who after being declared surplus w.e.f. 16.05.2001 were

absorbed in government service vide notification dated 30.05.2007 and have retired thereafter and (iii) the petitioners who are/were still working as on the date of filing of the writ petitions under the government of Jharkhand after being absorbed vide notification dated 30.05.2007. We uphold the conditions enumerated at clause 11 and 12 of the absorption notification dated 30.05.2007 where under appointment of such persons were treated as fresh appointment and their past services would not be counted for the purpose of seniority or initial pay fixation."

7. The solitary question thus falls for consideration by this court is that whether the petitioner can get his past service regularized inasmuch as his appointment was not in the nature of stop-gap arrangement and he occupied the post uninterruptedly till his service got regularized.

8. It is apparent from the writ petition that the engagement of the petitioner was made following the due process and he continued on the ad-hoc basis till 30.07.2004, on which day, he was regularized by the office order dated 20.01.2005 [Annexure-2 to the writ petition]. The averments made in this regard in Para-2 of the writ petition have not been disputed by the respondents rather they have admitted the other relevant facts [see the reproduction of Para-9 of the reply].

9. In **Direct Recruit Class-II Engineering Officers' Association** (supra) the apex court has clearly laid down that if the initial engagement is made following the due process and the appointee continues in the post interruptedly till the regularization of the service following the rules, the period of the ad-hoc service will be counted.

10. In this case, the respondents in their reply have contended that before appointment of the petitioner, there was an initiative to amend the existing RR for the post of Junior Engineer. When the recruitment rules are enacted, the petitioner was found to be eligible for having the required qualifications. It has been categorically admitted by the respondents that there was "Departmental Vacancy" and against

those vacancies, the petitioner along with three others were appointed by the office order No.F.2(37)-Agri/Estt/90/93 dated 23.12.1992 as Junior Engineer (Civil) Grade-I on ad-hoc basis. The petitioner joined in terms thereof on 28.12.1992. Thus, it is clear that the petitioner was engaged in a regular post and he had withdrawn the pay and allowances against the said post in the regular scale of pay. In **Bholanath Hansda**(supra) “the appellants” had not occupied any departmental post, they were working under a scheme on contractual basis and on that premises, the Jharkhand High Court declined to allow their past services counted for purpose of seniority or initial pay fixation following the principle of **Dhyan Singh**(supra). As such that decision cannot have any bearing in the present context.

This court is of the view that the petitioners case is fully covered by the apex court’s decision in **Direct Recruit Class-II Engineering Officers’ Association**(supra).

11. Having observed thus, the respondents are directed to treat the petitioner to have regularized from 28.12.1992 instead of 30.07.2004 [the date on which by the officer order dated 29.01.2005 the petitioner was regularized]. It is made absolutely clear that if any person who was regularly appointed or promoted on or before 30.07.2004, their seniority shall not be affected by operation of this order.

In terms of the above, this writ petition stands allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE