

**HIGH COURT OF TRIPURA
AGARTALA**

WP (C) No. 219 of 2018

Smti. Laxmi Rani Sarkar @ Laxmi Sarkar,
daughter of Khudiram Sarkar,
wife of Late Dulal Naha,
Vill. Gandhigram, P.S. Airport, Agartala,
West Tripura, P.O. Gandhigram

-----Petitioner(s)

Versus

1. The State of Tripura,
represented by its Secretary cum Commissioner,
Department of Social Welfare and Social Education,
Government of Tripura, New Capital Complex,
P.O. Kunjaban, Agartala, West Tripura
2. The Director,
Department of Social Welfare and Social
Education, Government of Tripura, Abhoynagar,
Agartala, P.O. Abhoynagar, West Tripura
3. The Principal Secretary,
Finance Department, Government of Tripura,
New Capital Complex, Agartala, West Tripura
4. Tripura State Social Welfare Board,
represented by its Chairperson, T.R.T.C,
Krishnanagar, Agartala, West Tripura
5. The Secretary,
Tripura State Social Welfare Board,
T.R.T.C, Krishnanagar, Agartala, West Tripura
6. Union of India,
represented by the Ministry of
Women and Child Development
7. Central Social Welfare Board,
represented by its Chairperson,
Dr. Durgabai Deshmukh Samaj Kalian Bhawan,
B-12, Qutab Institutional area, New Delhi-110016

----- Respondent(s)

For Petitioner(s)	:	Ms. R Purkayastha,, Adv.
For Respondent(s)	:	Mr. RG Chakraborty, Adv. Mr. A Bhowmik, Adv. Mr. B Majumder, CGC.
Date of hearing	:	16.05.2019
Date of pronouncement	:	29.06.2019
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

By means of this writ petition, the petitioner, who had been serving as DRW/Contingent Peon (Group-D) under the respondent No. 4, Tripura State Social Welfare Board, has urged this Court to direct the respondents collectively to regularize her service retrospectively w.e.f. 04.04.2012 and provide all financial and service benefits, including pension and other retiral benefits.

2. It appears from the records that the petitioner had retired from service on 31.05.2018, her date of superannuation. As the Finance Department, Government of Tripura, (respondent No. 3) has regretted the regularization of the petitioner, she has challenged the said decision to pave the way for issuance of mandamus in terms of the above.

3. The petitioner was engaged as the daily rated worker (DRW) initially by the memorandum No.F.10(10-1)/80 dated 28.09.1981. The petitioner had reported to her duties to the Project Implementing Committee, Khowai Border Area Project and continued to work there in the said capacity till 31.10.1988. By the memorandum No. F.1.(24)/87 dated 01.11.1988 issued

by the respondent No.4, the petitioner was absorbed as the Contingent Peon on the consolidated pay of Rs.600/- per month for the period from 09.11.1988 to 02.05.1989. By another memorandum under No. F.1(24)/87 dated 01.02.1989 issued by the respondent No.5, the petitioner was again allowed to work as DRW with effect from 06.02.1989.

4. The petitioner had been working as DRW/Contingent Peon (Group-D) under the respondent No.4, as stated. Her service got extended for a period spanning about 36 years. Her service, according to the petitioner was continuous and without any break. Even where there is some mechanical break in the service, as per the stipulation of the engagement, on those breaks, the petitioner was engaged by separate orders as DRW to serve the respondent No.4.

5. According to the petitioner, for engagement of the petitioner prior concurrence from the Finance Department, Government of Tripura and approval from the Central Social Welfare Board were taken. But the respondents did not consider the petitioner for regularization, notwithstanding her long service. But some persons were engaged on regular basis under the same capacity from the similar status but the petitioner's case for regularization was harshly ignored.

6. By the memorandum No. F.34(3)-FIN(G)/2012 dated 04.09.2012 (Annexure-D to the writ petition), Government of Tripura has adopted the policy of regularization of

DRW/Contingent employee who were engaged prior to 31.03.2003 on full time basis and had completed 10 years of service. The said category of DRWs/Contingent workers were considered for regularization, subject to fulfillment of other conditions as stipulated.

7. The petitioner has asserted that she was eligible for regularization in terms of the memorandum dated 04.09.2012. The petitioner's name, along with some others, with all particulars, was sent to the respondent No.2 by the forwarding letter dated 14.09.2012 (Annexure-E to the writ petition) for regularization. The petitioner has further asserted that in the said process many DRWs and contingent employees were regularized but her case was not considered. The petitioner has given some examples how such regularization had taken place.

8. By the memorandum dated 20.11.2017 (Annexure-H to the writ petition), one Swaraj Ghosh, not party in this proceeding, was regularized on relaxing the age and qualification and on taking 100% financial responsibility by the State government, but the petitioner was deprived and was not equally treated.

9. By the memorandum under No. F.8(3)/FIN(G)/78 dated 25.02.2010 the Government of Tripura declared benefit of counting half of the period of continuous service rendered by DRWs/contingent workers/multi-rated workers/casual workers who are engaged on full time basis, for purpose of pension.

According to the petitioner, since she has served the respondents continuously for 36 years or more, she is entitled to be regularized by the State Government. Further, she is entitled to get the benefit of half of her service period on full term basis towards pension, etc.

10. The respondents No. 1, 2 & 3 on the one part and the respondents No. 4&5 on the other part have filed their replies separately. The respondent No. 1,2&3, in the reply filed on 28.11.2018, have denied the claim of the petitioner of continuous service. According to them, the petitioner's service was terminated and she was out of engagement for quite some time and later on she was again engaged.

11. In para 3(viii), of the said reply, it has been highlighted that *"based on the report of the Social Welfare Board it is fact that the service of the petitioner was broken several times prior to 11.12.2009 and hence fulfillment of condition of 10 years continuous service in the same post was not fulfilled and therefore, she was not competent on the date to be regularized and hence the proposal cannot be considered."*

12. The respondents No.4&5 have made an elaborate reply as the petitioner was engaged by them. According to them, the respondent No.4, Tripura State Social Welfare Board is an autonomous body and expenditure relating to the said State Board is shared in the ratio of 50:50 between the Central Social Welfare Board, New Delhi and the Government of Tripura. The

post sanctioning authority is the Central Social Welfare Board, New Delhi. The respondents No.4&5 cannot create any post or fill up vacancy without approval from the Central Social Welfare Board, New Delhi. According to them, the memorandum dated 04.09.2012 cannot apply in the case of the petitioner, inasmuch as the memorandum clearly provides that, it would apply to the Daily Rated Workers/MRWs/contingent workers/casual etc. workers/consolidated fixed pay/fixed pay workers/ other than part time workers, contractual/contract basis workers/honorarium paid workers/workers engaged under SSA and other Schemes/Programmes, in different State PSUs and other autonomous bodies including Agartala Municipal Council and Nagar Panchayat who were engaged, either prior to 31.03.2003 with or without prior concurrence of Finance Department on full time basis and have completed 10 years of service. The category of such persons would be considered for regularization, subject to the other conditions laid down in the said memorandum dated 04.01.2012 (Annexure-1 to the reply filed by the respondents No.4&5).

13. Reference has been made to the rules governing composition and functioning of the State Social Welfare Boards (Annexure-2 to the reply filed by the respondents No.4&5) where under paragraph 10(viii), it has been provided that the employees of the state board will be governed by the State Government Rules in terms of the service conditions. The state

board will also follow the State Government rules in case of other financial and administrative matters.

14. This aspect of the matter has come in conflict with the stand taken by the respondent No.4 & 5 in their reply inasmuch as, that provision has clearly laid down that the employees of the state board will be governed by the state government rules.

15. The respondents No.4&5 have produced the memorandum dated 01.11.1988 which is in respect of temporary absorption of the petitioner as the contingent peon. The memorandum dated 01.02.1989 is the engagement letter of the petitioner as the contingent peon of Khowai Border Area Project with stipulation of tenure from 01.02.1989 to 05.02.1989.

16. The memorandum dated 13.03.1989 contains the absorption note of the petitioner as the contingent peon from 15.02.1989 to 31.03.1989. The memorandum dated 29.03.1989 contains engagement of the workers for the period from 01.03.1989 to 31.03.1989. The memorandum dated 02.05.1989 contains the order of engagement of the petitioner as the contingent peon for the period from 09.05.1989 to 05.08.1989 and thereafter, it has been stipulated that the engagement of the petitioner would automatically stand terminated w.e.f. 05.08.1989 (afternoon). The memorandum dated 07.08.1989 contains the order of engagement of the petitioner as the contingent peon for the period from 07.08.1989 to 03.11.1989 with similar stipulation that the engagement would stand terminated w.e.f. 03.11.1989 (afternoon). The memorandum

dated 06.11.1989 contains the order of engagement of the petitioner as the contingent peon for the period from 06.11.1989 to 02.02.1990 with stipulation of termination on 02.02.1990. The memorandum dated 05.02.1990 contains the order of engagement of the petitioner as the contingent peon for the period from 05.02.1990 to 31.03.1990 with stipulation of termination on 31.03.1990 (afternoon).

17. The memorandum dated 11.04.1990 contains the engagement of the petitioner as the contingent peon from 09.04.1990 to 06.04.1990 with stipulation of termination on 09.04.1990 (afternoon) and the memorandum dated 10.10.1990 contains the engagement of the petitioner for the period from 08.10.1990 to 04.01.1991 with stipulation of automatic termination on 04.01.1991(afternoon). The memorandum dated 15.01.1991 contains the order of engagement of the petitioner as the contingent peon from 07.01.1991 to 31.03.1991 with stipulation of termination on 31.03.1991 (afternoon). The memorandum dated 03.04.1991 contains the order of engagement of the petitioner as contingent peon from 02.04.1991 to 29.06.1991 with stipulation of termination on 29.06.1991 (afternoon). The memorandum dated 24.07.1991 contains the engagement of the petitioner as the contingent peon from 01.07.1991 to 27.09.1991 with stipulation of termination on 27.09.1991 (afternoon). The memorandum dated 01.10.1991 contains the engagement of the petitioner as the contingent peon from 30.09.1991 to 27.12.1991 with stipulation of termination on

27.12.1991 (afternoon). The memorandum dated 03.01.1992 contains the engagement of the petitioner as the contingent peon from 30.12.1991 to 27.03.1992 with stipulation of termination on 27.12.1992 (afternoon). The memorandum dated 14.08.1996 contains the engagement of the petitioner as the contingent peon from 07.05.1996 to 01.10.1996 with stipulation of termination on 01.10.1996 (afternoon).

18. It is apparent that after every 89 days the contingent service of the petitioner was termination and the petitioner was re-engaged. The respondent Nos. 4&5 after illustrating the nature of engagement the petitioner was having during her service tenure have stated in para (G) as follows:-

"G. That the petitioner was appointed as a daily rated worker @ Rs.7 per day for the office of project implementing authority of erstwhile Khowai Border Area subject to the condition that the engagement of the petitioner will be terminated at any time without assigning any reason or without giving any notice of termination. Thereafter the petitioner continued in that capacity upto 31.10.1988 and later on the petitioner was absorbed as contingent peon of answering respondent on the consolidated pay of Rs. 600 from 09.11.1988 to 05.02.1989. From 06.02.1989 the petitioner was further allowed to work as daily rated worker on no work no pay basis. Thereafter from 15.02.1989 to 31.03.1989 the petitioner was temporally absorbed as contingent peon on consolidated pay of Rs.600 with condition that the service of the petitioner will be automatically discontinued on 31.03.1989. Thereafter from 1st April, 1989 the petitioner was allowed to work as DRW @ Rs.19.50 per day. The petitioner were temporally absorbed on consolidated pay of Rs.600 only per month from 09.05.1989 to 05.08.1989 with certain conditions. After discontinuation of the service of the petitioner, the petitioner was further absorbed as contingent peon on a consolidated pay of Rs.775 for a period of 89 days from 07.08.1989 to 03.11.1989 subject to condition that the service of the petitioner will be automatically terminated on 03.11.1989. Thereafter from 06.11.1989 to 02.02.1990 the petitioner was allowed to work as contingent peon subject to condition that the service of the petitioner will be automatically terminated on 02.02.1990. Likewise the petitioner was allow to served from:-

05.02.1990-31.03.1990	09.04.1990-06.07.1990
09.07.1990-05.10.1990,	08.10.1990-04.01.1991,
07.01.1991-31.03.1991,	02.04.1991-29.06.1991,
01.07.1991-27.01.1991,	30.09.1991-27.12.1991,
30.12.1991-27.03.1992,	01.04.1992-23.06.1992,
30.06.1992-26.09.1992,	28.09.1992-25.12.1992,
28.12.1992-26.03.1993,	29.03.1993-31.03.1993,
02.04.1993-29.06.1993,	02.07.1993-28.09.1993,
30.09.1993-27.12.1993,	29.12.1993-27.03.1994,
29.03.1994-31.03.1994,	02.04.1994-29.06.1994,
01.07.1994-27.09.1994,	30.09.1994-27.12.1994,
29.12.1994-27.03.1995,	29.03.1995-31.03.1995,
01.04.1995-28.06.1995,	30.06.1995-26.05.1995,
28.09.1995-25.12.1995,	04.03.1996-31.03.1996,
02.04.1996-29.06.1996,	05.07.1996-01.10.1996.

The petitioner in the same manner was allowed to serve as contingent peon upto 11.12.2009 with condition that her service will automatically be terminated/broken down after each 89 days. The condition of breakdown of service after 89 days was made on the basis of approval of the Central Social Welfare Board, New Delhi. The condition of break down of service after 89 days was withdrawn w.e.f. 11.12.2009.

Copy of the memo dated 01.11.1988, 01.02.1989, 13.03.1989, 29.03.1989, 02.05.1989, 07.08.1989, 06.11.1989, 05.02.1990, 11.04.1990, 10.10.1990, 15.01.1991, 03.04.1991, 24.07.1991, 01.10.1991, 03.01.1992, 14.08.1996 are annexed herewith and marked as ANNEXURE R/3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, & 18."

19. Thereafter, those respondents have categorically asserted that for the very nature of the engagement, the petitioner did not complete the 10 years of service and as such she cannot get the benefit of the memorandum dated 04.09.2012 as issued by the Finance Department, Government of Tripura. That apart, the respondents have asserted that in the entire writ petition, the petitioner has not stated that she was serving as the full time employee. Unless, a contingent/DRW was serving on full time basis, he/she cannot claim regularization. According to the respondent No. 4&5, the petitioner's claim of regularization is unsustainable and hence, the writ petition be dismissed.

20. It appears from the reply filed by the respondent No. 4 & 5, particularly from the communication dated 24.07.2013

made by the Chairperson of Tripura State Social Welfare Board, the respondent No.4 that Tripura State Social Welfare Board, the respondent No.4 had taken initiative for regularization of the petitioner. From the said communication (Annexure-20 to the reply filed by the respondent No. 4&5) it further appears that a categorical proposal in respect of the petitioner was made in the following manner:

"III. Very recently Central Social Welfare Board, New Delhi, one of the funding agency has made it clear that they would bear 50% liability respect of regularization of the services of Adhoc/Contingent Staff subject to the condition that the State Govt. would give clearance for regularization of their service and would also bear rest 50% liability. (Copy enclosed as Annexure-'A').

If it is agreed then 50% liability shall be required to be borne for the fixed pay employees namely Smt. Laxmi Sarkar, Contingent Peon and Smt. Dipti Deb, Contingent Peon as they recruited on receipt of approval from the Central Social Welfare Board, New Delhi. On the other hand 100% liability shall be required to be borne for Sri. Swaraj Ghosh, Daily Rated Worker, (Group-D) who had been recruited initially by Board itself and subsequently the State Govt. had been pleased to communicate their approval."

21. But what happened after that communication is not available in the records. It may be that the State Government had regretted that proposal. Particularly, from the communication dated 16.03.2013 (Annexure-8 to the reply filed by the respondents No. 1-3) it surfaced that the Government of Tripura had communicated to the Secretary to the respondent No.4 that the proposal regarding regularization of DRWs under Tripura State Social Welfare Board along with necessary document as submitted by the Chairperson, Tripura State Social Welfare Board had been sent to the Finance General Department

vide letter No. F.10(6)-DSWE/ESTT/2009/3506 dated 17.11.2012 for necessary action. It records thereafter:

"But as per letter vide No. F.34(3)-FIN(G)/2012(L) dated 16.02.2013, the Joint Secretary, Finance Department regrets the departmental proposal with the following comments "Finance Department regrets the proposal of the Department as services of the persons proposed for regularization had stand terminated on 11.12.2009 as per document furnished by the Department along with the proposal.""

22. The petitioner, however, has made a discreet attempt to unveil the reasons for denial by filing the rejoinder. In the rejoinder, the petitioner has stated as follows:

"The service break as stated supra gets nullified from the fact that this alleged break of service was in real terms not at all a break in service as during this period, the petitioner had worked as Daily rated worker which inter alia means that for some tenure the petitioner had worked on consolidated pay and for some tenure the petitioner had worked as Daily Rated worker i.e. since 1988 the petitioner had been working continuously without any break in service on regular full time basis on interchangeable mode of payment/wages/salary. The memos pertaining to the service/work of the petitioner on full time basis during the tenure of this above alleged break in service period (as stated supra so claimed by the respondents) are enclosed herewith."

23. Thus, it becomes crystal clear that after serving for about 36 years under the respondents but the petitioner did not get any benefit including regularization. The petitioner has succinctly stated that the claim of the respondents that the petitioner did not complete 10 years of service in the same post as her service was broken several times, cannot stand inasmuch as those were mechanical breaks to deprive any claim of the petitioner on the basis of the service.

24. The petitioner has further stated that since 1988 till 31.03.2003 the petitioner had continuously worked on full time basis on inter-changeable capacity of DRW or the contingent peon on consolidated fixed pay.

25. Since the rules, governing the composition and functioning of the State Social Welfare Board provide that the rules framed by the state government will be applicable and hence the said memorandum issued by the finance department on 04.09.2012 will equally be applicable in the case of the petitioner.

26. Ms R Purakaystha, learned counsel appearing for the petitioner has quite emphatically submitted that the petitioner had been working under the project implementing committee of various border area projects till her retirement on extension of the tenure-based engagement. In that course, she attained the age of superannuation. Ms R Purakaystha, learned counsel appearing for the petitioner has submitted that after 36 years of service the petitioner was not considered for regularization. Thus, she has been deprived of minimal security for life.

27. Ms R Purakaystha, learned counsel appearing for the petitioner has further submitted that the Apex Court in ***Narendra Kumar Tiwari and others vs. State of Jharkhand and Ors., (2018) 8 SCC 238*** has made certain observations which are highly relevant in the present context.

28. In **Narendra Kumar Tiwari** (supra) the very concept of onetime measure has been explained in reference to **State of Karnataka Vs. ML Kesari** reported in **(2010) 9 SCC 247**. In **ML Kesari** (supra), it has been observed that the term onetime measure has to be understood in its proper perspective. This would normally mean that after the decision in **State of Karnataka Vs. Uma Devi (3)**, reported in **(2006) 4 SCC 1** each department or each instrumentality should undertake onetime exercise and prepare a list of all casual, daily-wager or ad hoc employees who have been working for more than 10 years without intervention of courts or tribunals and subject them to a process of verification as to whether they are working against vacant post or possess the requisite qualification for the post and if so, regularize their services. At the end of six months, from the date of decision in **Uma Devi (3)** cases of several daily wager/ad hoc/ casual employees were still pending before courts. Consequently, several departments or instrumentalities did not commence the onetime regularization process.

29. On the other hand, some government departments or instrumentalities undertook the onetime exercise on several employees from consideration either on the ground that their cases were pending in the courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision of **Uma Devi (3)**, will not be lost sight of their right to be considered for regularization., Merely because the onetime exercise was

completed without considering their cases or because the six months' period mentioned in para 53 of **Uma Devi (3)**, has expired., the onetime exercise should not be considered abandoned. All daily wagger/ad hoc/casual employees who had put in 10 years of continuous service as on 10.04.2006 without availing the protection of any interim orders or courts or tribunals, even if any employer had held the one time exercise in terms of para 53 of **Uma Devi (3)**, but did not consider the cases of some employees who were otherwise entitled to the benefit of para 53 of **Uma Devi (3)**, the employer concerned should consider their cases also as continuation of the onetime exercise. The onetime exercise will be concluded only when all the employees who were entitled to be considered in terms of para 53 of **Uma Devi (3)**, are so considered.

30. According to **Kesari** (Supra), the object behind the said direction stated in para 53 of **Uma Devi (3)**, is twofold. First is to ensure that those who had put in 10 years of continuous service without protection by any interim order of courts or tribunals before the date of decision in **Uma Devi (3)** they all are to be considered for regularization in view of their long service. Secondly, it is to ensure that the department/instrumentalities do not perpetuate the practice and then periodically regularize them on the ground that they have served for more than 10 years and thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all the

persons who have worked for more than 10 years as on 10.04.2006 [the date of decision in ***Uma Devi (3)***] without the protection of any interim order of courts or tribunals, in vacant post possessing the requisite qualification are entitled to be considered for regularization. The fact that the employer has not taken such exercise of regularization within six months of the decision in ***Uma Devi (3)*** or that such exercise was only undertaken in regard to a limited few, will not disentitle such employees the right to be considered for regularization in terms of the direction of ***Uma Devi (3)*** as onetime measure.

31. In ***Narendra Kumar Tiwari*** (supra), the Apex Court while reconsidering the purpose and intent of the decision in ***Uma Devi (3)*** has held that the purpose and intent was twofold, namely to prevent irregular or illegal appointments in the future and to confer a benefit on all those who had been irregularly appointed in the past. It has been observed that “the irregular appointments are continued and whenever required the contingent employees are terminated from their service on the ground of their irregular appointments. This is nothing but a form of exploitation of the employees by not giving them the benefit of regularization and by placing the sword of Damocles on their head to scare them with looming uncertainty. This is precisely what ***Uma Devi (3)*** and ***Kesari*** (supra) sought to avoid.

32. Ms R Purakaystha, learned counsel has even though placed reliance on ***Sachivalay Dainik Vetan Bhogi Karmachari Union, Jaipur Vs. State of Rajasthan & Ors.***

reported in **(2017) 11 SCC 421** but the said decision cannot be applied in the present context. It might have a nexus with granting of benefit for past service for purpose of pension, etc.

33. Ms R Purakaystha, learned counsel has also relied on a decision of the Apex Court in **State of Rajasthan & Ors. vs. Dayalal and ors.** reported in **(2011) 2 SCC 429** where the apex court has laid down the principles relating to regularization and parity in pay in the following manner:

"(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 a 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.

[See State of Karnataka vs. Uma Devi (3): 2006 (4) SCC 1, M. Raja vs. CEERI Educational Society: 2006 (12) SCC 636, S.C. Chandra vs. State of Jharkhand : 2007 (8) SCC 279, Kurukshetra Central Co-operative Bank Ltd vs. Mehar Chand : 2007 (15) SCC 680 and Official Liquidator vs. Dayanand : 2008 (10) SCC 1"]

34. In **Union of India and Ors Vs. S Pillai and Ors.** reported in **(2010) 13 SCC 448** the Apex Court having referred to **Uma Devi (3)** (supra) has observed that there is no fundamental right in those who have been employed on daily wages or temporarily or contractual basis to claim that they have a right to be absorbed in service. As has been held by the Apex court, they cannot be said to be holder of a post since the regular appointment could be made only by making appointment/recruitment, consistent with the requirement of Article 14 and 16 of the Constitution of India. The right to be treated equally with other employees, employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals with equals. The claim of right to be absorbed in the service by regularization is not acknowledged in the concerned jurisprudence.

35. In **Uma Devi (3)** it has been stated in the oft quoted para 53 as follows:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore vs. S.V. Narayanappa, (1967) 1 SCR 128: AIR 1967 SC 1071, R.N. Nanjundappa vs. T.Thimmiah, (1972) 1 SCC 409: (1972) 2 SCR 799 and B.N. Nagarajan vs. State of Kanrantaka, (1979) 4 SCC 507 : 1980 SCC (L& S) 4 : (1979) 3 SCR 937 and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the case above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per constitutional scheme."

36. A decision of this Court in **Mamata Rani Roy (Saha) vs. State of Tripura & Ors.** reported in **(2016) 1 TLR 713** has been pressed into service to show the example that this Court had given the direction for giving the benefit of past service after regularization of School Mothers under School Education Department, (Social Welfare and Social Education).

37. For the respondents, Mr. A Bhowmik, learned counsel and Mr. RG Chakraborty, learned counsel have appeared and categorically stated that for absence of continuous service the petitioner will not be covered by onetime measures. Moreover, the State government has considered the proposal sent by the

respondent No. 4 but there is no scope for further consideration particularly when, the petitioner has retired from service.

38. Having appreciated the submission made by the learned counsel for the parties and the law as cited, this Court is of the view that the petitioner has correctly contended that when the tenure based engagement was terminated, as a stop gap measure till the next order of engagement, the petitioner was allowed to work as DRW inasmuch as in this regard there is no denial by the respondents. In that premise, the objection as to the continuous service, may appear to be very attractive at the first blush but if an inquiry is made as regards the real state, it would only surface that the petitioner was subjected to technical breaks, so that she cannot claim the continuous service for purpose of regularization, etc.

39. In the present case, in the gap of two engagements the petitioner was allowed to work as DRW. The petitioner has correctly stated that these engagements were interchangeable to realize the continuous service from the petitioner. As such, it has to be held that the petitioner served the respondents continuously for more than 10 years on or before the judgment of **Uma Devi (3)** (supra). Even if, the petitioner's case is not covered by the memorandum dated 04.09.012 (Annexure-1 to the reply filed by respondents No. 4&5), definitely the petitioner's case will be covered by the decision in **Uma Devi (3)** (supra).

40. This Court has noted with a streak of surprise, that the Central Social Welfare Board has assured 50% of the financial liability inasmuch as the petitioner's engagement was approved by the Central Social Welfare Board and the government of Tripura. The State government's financial liability was/is only restricted to 50%. That apart, it is obvious that a onetime measure in terms of the direction of **Uma Devi (3)** (supra) was not taken in the Tripura State social Welfare Board being one of the instrumentalities of the government and hence, the direction contained in **Narendra Kumar Tiwari** (Supra) would bind the respondents to consider regularization of the petitioner.

41. Having appreciated the rival contentions and the records so produced, the following declaration and directions are made by this Court to be strictly complied:

a) The petitioner had completed 10 years of continuous service till 10.04.2006 when Uma Devi (3) was pronounced by the Apex Court.

b) The mechanical breaks and the intermittent engagement as DRW are to be treated as continuity in the service so far the petitioner is concerned.

c) Since the petitioner has attained the superannuation her pay and allowances be determined notionally w.e.f 10.04.2006 till her retirement but the petitioner be paid the pension on adding 50% of the past service from the date of her regularization, i.e. 10.04.2006. Thus, the petitioner shall be entitled to regular pension like the State government employees inasmuch as

the rules governing composition and functioning of the State Social Welfare Boards provides that the employees of the State Board will be governed by the State government rules, in so far their service conditions are concerned, the petitioner will be entitled to get the pension and other retiral benefits in terms of the relevant rules, including Central Civil Service (Pension) Rules, 1972 as adopted in the State of Tripura and amended from time to time.

d) The arrear of pension and other retiral benefits shall be paid to the petitioner within a period of six months from the date when the petitioner shall serve a copy of this order to the respondents.

42. In terms of the above, this writ petition stands allowed.

There shall be no order as to costs.

सत्यमेव जयते

JUDGE