

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.356/2020

Sri Maran Das

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Advocate.

For Respondent(s) : Mr. Dipankar Sharma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

26/11/2020

Petitioner has challenged a communication dated 13.05.2020 issued by the Director of Urban Development rejecting the request of the petitioner for regularization of his service on the ground that under a memo dated 31.07.2018 earlier scheme for regularization has been cancelled.

2. Brief facts are as under:

The petitioner was engaged as a casual worker by Agartala Municipal Corporation (AMC) w.e.f. 02.04.1988. He continued to work in the said capacity continuously for years together. Under memorandum dated 01.09.2008 the Government of Tripura, Department of Finance framed a scheme for regularization of casual workers and daily rated workers who

had completed 10 years of service as on 31.03.2008. By virtue of memos dated 01.09.2008 and 21.01.2009 such benefit of regularization would be available to casual workers and DRWs who were engaged before 31.3.2003, on the date of completion of 10 years of service even if it happened to be after 31.3.2008. Thus, regularization would take effect from 01.07.2008 or the date of completion of 10 years of service whichever is later. It is not in dispute that AMC has adopted the said scheme of regularization framed by the Government.

3. The petitioner approached the respondent authorities for regularization under a communication dated 02.11.2018 pointing out that he was engaged prior to 31.03.2003 and has since long completed 10 years of service as casual labourer. As per the Government policy, therefore, he was entitled to regularization. In response to the said communication, AMC replied to the petitioner on 26.12.2018 conveying that the petitioner was engaged as a casual labourer before he had crossed the age of 18 years. The petitioner thereupon filed WP(C) No.394 of 2019 seeking regularization which was disposed of by a Single Judge on 26.06.2019. Following directions were issued:

“[8] Having regard to the submission made by the learned counsel, the petitioner is directed to file a fresh

representation to the respondents giving all his service particulars including the nature of job he has been discharging all the years within a period of 15 days from the date when the petitioner will get a copy of this order, and the respondents No.4 & 5 shall forward that representation with all service particulars to the respondents No. 1, 2 & 3 for regularization of the petition. The respondents No. 4 & 5 should have considered first but as they had already recommended the regularization of the petitioner to the respondent No.2, no further recommendation is required. Thereafter, the respondents No. 1, 2 & 3 having taken due care of the observation made in *Amarkanta Rai* (supra), shall decide issue of the regularization of the petitioner within a period of 3 (three) months from the date when the representation would reach to the respondent No.2. The respondent No.2 shall be responsible for coordinating the approval from the Finance Department and the Urban Development Department. It is to be noted that in view of Section 78 of the Tripura Municipal Act 1994, amended from time to time, Agartala Municipal Corporation does not have any power to create post without approval of the Urban Development Department.

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

4. Thereupon the Director of Urban Development issued the impugned communication and, as noted, rejected the request of the petitioner for regularization on the ground that the scheme for regularization has been cancelled by the Government.

5. Along with the reply the respondents have produced an office memorandum dated 31.07.2018 cancelling the previous scheme for regularization. Following portion of the said office memorandum is relevant:

“2. Recently, the matter has been further reviewed. It has been observed that there are some shortcomings in these instructions for regularization of the services of DRWs/Casual/Contingent staff affecting institutional efficiency and individual productivity due to different reasons.

3. With a view to ensure transparent public employment policy for engagement of staff for such services, all the memorandums as mentioned above are repealed.

4. All concerned are requested to ensure strict implementation of above decision with immediate effect.”

6. The Government has also issued office memorandum dated 01.08.2018 putting a complete ban on engagement of DRW, Casual or Contingent workers without the concurrence of the Finance Department.

7. In view of such background learned counsel for the petitioner submitted that previously the request of the petitioner for regularization was turned down on a ground that at the time of his initial engagement he was less than 18 years of age. Subsequently, the ground cited is of the scheme of

regularization being withdrawn by the Government. However, before the scheme was withdrawn the petitioner had completed the requisite years of service even after attaining the age of 18 years. His right of regularization, therefore, had crystallized. Large number of similarly situated casual workers have been regularized under the previous scheme. The case of the petitioner cannot be singled out. The withdrawal of the scheme of regularization can be done only prospectively.

8. Learned Addl. Government Advocate Mr. Dipankar Sharma opposed the petition contending that once the Government withdrew the scheme of regularization no direction should be issued for regularizing the service of the petitioner. In interest of transparency in Government employment the State Government has taken such steps. Petition may, therefore, be dismissed.

9. As noted, in the first round when the petitioner approached the authorities for regularization of his service, the same was rejected on a simple ground that he was engaged as a casual labourer before he crossed the age of 18 years. Such service, therefore, would be treated as “boy service”. Learned counsel for the petitioner was, however, correct in pointing out that even if this ground is correct, the petitioner completed 18

years of age while he was still engaged as a casual worker. Even counting from such stage (which according to the counsel for the petitioner happened in the year 2002) after completion of 10 years of service as a casual labourer thereafter the petitioner had a right to be considered for regularization in terms of the Government of Tripura scheme. If such consideration was granted timely, the petitioner would have received the benefit of the scheme and consequently the regularization. Since this was not done, the petitioner had to approach the High Court which directed the authorities to consider his case.

10. In my opinion, the authorities are not correct in citing the withdrawal of the previous scheme for regularization to deny the benefit of the scheme to the petitioner which had accrued in the old scheme. Large number of similarly situated employees were considered for regularization and regularization was also granted. The petitioner's right to be considered for regularization in terms of the said scheme accrued before the Government of Tripura withdrew the scheme under office memorandum dated 31.07.2018. Merely because the authorities did not consider the case of the petitioner at the relevant time or did not consider his case correctly, the petitioner cannot be denied the benefit of the scheme on the ground that at a later date the scheme was withdrawn.

11. Here is not a case where the scheme for regularization was withdrawn from its inception. Had the Government of Tripura found that the scheme suffered from some inherent defect such as, being unconstitutional and, therefore, was withdrawn *ab initio*, the stand of the respondents that the petitioner cannot any longer seek regularization under such scheme, would have been perfectly justified. Here is the case where the Government decided to dismantle the scheme and further decided not to engage any fresh casual labourer, daily rated workers or contingent workers except in case of emergency situation in which case also ordinary rule would be to outsource the service. An anomalous situation would arise if the stand of the Government is accepted. Large number of similarly situated persons have got the benefit of regularization under the then existing scheme. The petitioner whose case was not considered properly at the correct time would be denied the benefit only on account of efflux of time. Passage of time which cannot be attributed to the petitioner cannot be the ground for denying the benefit which should have flown in favour of the petitioner. Prompt and correct consideration of a claim cannot be the basis for granting the benefit and slow or incorrect decision by the authorities cannot be the source for denying such benefit.

12. Even if the service of the petitioner as a casual worker before he crossed the age of 18 years is to be ignored, his right to be considered for regularization under the scheme framed by the Government after completion of 10 years of service of crossing the age of 18 years cannot be taken away.

13. In the result, by allowing the petition the respondents are directed to consider the case of the petitioner for regularization in terms of the Government of Tripura scheme framed under office memorandum dated 01.09.2008. It is clarified that the length of the service of the petitioner would be reckoned from the date he crossed 18 years of age. The petitioner would be entitled to regularization from due date, however, actual difference in salary even if regularization is granted, would be available from today. The entire exercise shall be completed within four months from today.

14. Petition is disposed of accordingly. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

Pulak