

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.192/2020

1. The State of Tripura, To be represented by the Principal Secretary, Department of Forest, Govt. of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, Pin-799010.
2. The Principal Chief Conservator of Forest, Tripura, Aranya Bhavan, P.N. Complex, Gorkhabasti, Agartala, West Tripura.
3. The D.F.O., West Tripura, P.O. Agartala, P.S. West Agartala, District-West Tripura.
4. The D.F.O., South Tripura, South Tripura District, Belonia.
5. The D.F.O., Gomati Tripura, Gomati District, Udaipur.
6. The S.D.F.O., Sadar, West Tripura, P.O. Agartala, P.S. West Agartala, District-West Tripura.
7. The S.D.F.O., Bagafa, Sub-Division Shantirbazar, South Tripura.
8. The S.D.F.O., Udaipur, Gomati District, Udaipur.

----Appellant(s)

Versus

1. Sri Gopesh Malakar, son of late Manoranjan Malakar, resident of Ichachara, P.O. Ichachara, Udaipur, Gomati Tripura, PIN:799105.
2. Sri Indrajit Debnath, son of Sudhir Debnath, Vil. & P.O. Lambuchara, P.S. Lefunga, PIN:799210.
3. Sri Biswanath Rathore, son of late Ramesh Raj Rathore, resident of Radhanagar, P.O. Agartala, P.S. West Agartala, District-West Tripura.
4. Sri Radhu Roy, son of Sri Nepal Roy, resident of Vill. & P.O. Barjala, P.S. New Capital Complex, Agartala, District-West Tripura.
5. Smt. Dola Banik, wife of late Sankar Baniak, resident of Vill. & P.O. Khajurbagan, P.S. NCC, Agartala, West Tripura.

6. Sri Dhruba Dey, son of late Mahindra Dey, Vill. & P.O. Muhuripur, P.S. Baikhora, South Tripura, PIN:799142.
7. Sri Paritosh Biswas, son of late Prafulla Biswas, Vill. & P.O. Sataria, P.O. Gakulpur, P.S. R.K. Pur, Udaipur, Gomati Tripura, PIN:799114.
8. Sri Rakesh Mog, son of Mongsanai Mog, resident of Bankul Mahamuni, P.O. Bishnupur, P.S. Sabroom, South Tripura, PIN:799143.
9. Sri Sankar Datta, son of Sri Dilip Datta, resident of Vill. & P.O. Muhuripur, P.S. Baikhora, South Tripura, PIN:799142.
10. Sri Dipak Banik, son of Sri Manik Banik, resident of Vill. & P.O. Muhuripur, P.S. Baikhora, South Tripura, PIN:799142.
11. Sri Samir Dey, son of Sri Dhruba Dey, resident of Vill. & P.O. Muhuripur, P.S. Baikhora, South Tripura, PIN:799142.
12. Sri Nitai Shil, son of Sri Mahendra Shil, resident of Vill. & P.O. Muhuripur, P.S. Baikhora, South Tripura, PIN:799142.

-----Respondent(s)

For Appellant(s)	: Mr. Debalay Bhattacharjee, G.A., Mr. Mangal Debbarma, Addl. G.A.
For Respondent(s)	: Mr. P. Roy Barman, Advocate, Mr. Samarjit Bhattacharjee, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Date of hearing : 14th December, 2020.

Date of judgment : 22nd December, 2020.

Whether fit for reporting : NO.

JUDGMENT & ORDER

(Akil Kureshi, C.J.)

This appeal is filed by the State Government to challenge the judgment of the learned Single Judge dated 13.09.2019 passed in WP(C) No.450 of 2019.

2. Brief facts are as under:

The respondents original petitioners had filed the said writ petition in which they had prayed for the directions to absorb them as permanent labourers in terms of Tripura Government Sepahijala Biological Complex/any other complex/Institution, Permanent Labourers (Recruitment and Condition of Service) Rules, 1990 (*hereinafter to be referred to as the said Rules*). According to the petitioners they were engaged as casual workers during different periods between 2003-2008. Majority of the writ petitioners were engaged in the year 2003. Some of them were engaged in the year 2007-08. The Government undertook the exercise of regularizing longstanding casual labourers as per the Government scheme for regularization. A list of 363 casual workers was prepared by the Deputy Conservator of Forests and communicated the District Forest Officer on 31.10.2017. Names of petitioners No.1 to 3 and 6 to 11 appeared in the said list. In the petition the petitioners had contended that looking to their length

of engagement as casual labourers, in terms of the provisions of the said rules they were required to be regularized. Even the Council of Ministers had cleared the absorption of all 363 casual workers listed in the said list as permanent labourers. However, eventually out of the said list only 341 casual workers were absorbed as permanent labourers excluding the petitioners. The petitioners had further averred that in other divisions also similarly situated casual workers were absorbed on the strength of the said rules.

3. The present appellants, i.e. the original respondents had opposed the prayers by filing affidavits. In the first of such affidavits dated 27.06.2019 it was contended that upon scrutiny only 349 out of the said 363 listed casual workers were found eligible for absorption. An additional affidavit was filed on 07.09.2020 in which it was further stated that out of the list of 363, 14 labourers were not regularized as per the report of the concerned District Level Committees.

4. The learned Single Judge by the impugned judgment allowed the petition making following observations:

“[18] According to this court there occasioned a serious discrimination, as the respondents failed to carry out the required scrutiny of the records which however they have carried out later on and found that all the petitioners were/are

eligible for absorption. Admittedly, for such lapse, the petitioners' name did not appear in the list of 361 casual labourers which was sent to the Council of Ministers for absorption.

[19] It has been admitted that for absence of the referred scrutiny of the records, names of the petitioners were not included in the list of casual workers which was sent to the Council of Ministers for approval of absorption as the Permanent Labourer.

[20] In such situation, by any stretch of interpretation or imagination, the exclusion of the petitioners cannot be accepted. It was incumbent upon the respondents to take appropriate action to undo the injustice. The petitioners being situated similarly, were entitled to be regularized in terms of the approval granted by the Council of Ministers. But they were not. Hence, the Memorandum dated 31.07.2018 in these cases will have no effect whatsoever.

[21] In view of this observation, this court is of the view that the petitioner shall be declared as permanent labourers against the existing 14 vacancies and they shall be declared permanent labourers for all purposes w.e.f. 11.01.2018 when last 8 casual workers were absorbed as Permanent Labourers by the Forest Department by virtue of the office order dated 11.01.2018. The declaration of Permanent Labourers w.e.f. 11.01.2018 shall be made within a period of 3 (three) months from the day when the petitioners shall furnish a copy of this order. The arrear pay and allowances as might accrue for the retrospective absorption of the petitioners as the Permanent Labourers shall be paid

within the next 3 (three) months from the date of absorption of the petitioners as the Permanent Labourer.

[22] In the result, this petition stands allowed to the extent as indicated above.”

5. Appearing for the appellants learned Government Advocate Mr. Debalay Bhattacharjee submitted that the petitioners were not eligible for absorption. They were not similarly situated as other casual labourers who were absorbed. The learned Single Judge committed an error in issuing the above noted directions.

6. On the other hand, learned counsel Mr. P. Roy Barman opposed the appeal contending that the District Committees had recommended the names of the petitioners for absorption. Learned Single Judge has examined all aspects of the matter. He raised fundamental objection to the very maintainability of the appeal. He pointed out that the Government had applied for extension of time for complying with the directions. Time was granted for such purpose. Thereafter it was not open for the Government to challenge the judgment. Even otherwise on merits, learned Single Judge has committed no error.

7. There is considerable force in the submission of the counsel Mr. Roy Barman. As per the decision of the Single Judge the directions were

to be complied within three months from the date of receipt of the copy of the judgment. The Government filed I.A. No.02 of 2020 in which it was stated that the Law Department has advised to take a fresh approval from the Council of Ministers for giving effect of the order passed by the High Court. In such situation the department is required additional time to process the matter for arranging for cabinet approval. It was, therefore, prayed that further three months time may be granted to comply with the judgment of the High Court dated 13.09.2019. The interim application was disposed of by an order dated 25.02.2020 relevant portion of which reads as under:

“Mr. Sharma, learned Addl. G.A appearing for the applicant has submitted that for administrative and cabinet approval, they require some more time for implementation of the judgment as it could not be possible to complete the process of approval within the time as stipulated by this court.

Having regard to the averments made and also on appreciation of undertaking that the respondents are going to implement the judgment and order dated 13.05.2019 delivered in WP(C) 450 of 2019 (Gopesh Malakar vs. State of Tripura) shortly, this court is inclined to grant the respondents extension of time till 31.03.2020.

It is made absolutely clear that under no circumstances, extension of time would be granted towards implementation.

In terms of the above, this application stands allowed and disposed of.”

8. Thereafter the Government filed yet another I.A. No.03 of 2020 for extension of time in which of course it was disclosed that the Government wishes to carry the matter in appeal. However, this application was disposed of as withdrawn on 10.08.2020.

9. Two things become clear from the record. Firstly, in I.A. No.02 of 2020 extension of time was sought on the ground that getting cabinet approval may take some more time and that further time may be granted for compliance. Even while this interim application was disposed of by the said order dated 25.02.2020 the Court had recorded that the time is sought for compliance. If there was any error or inaccuracy in recording the facts in the said order the Government should have approached the concerned Judge. The Government never corrected the impression of the Court that time was sought for compliance and not for challenging the judgment. It was on this basis that the extension of time was granted. The Government, therefore, could not have changed its stand and challenged the judgment of the learned Single Judge.

10. Even otherwise on merits also we do not find any ground for interference is made out. The learned Judge recorded that there were vacancies available on which the case of the petitioners could be considered

for absorption. It was on account of error on part of the District Administration that previously names of the petitioners did not appear in the list of casual labourers which was sent to the Council of Ministers for absorption.

11. In view of the above discussions, the appeal is dismissed.
12. Pending application(s), if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J

(AKIL KURESHI), CJ

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