

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.1173/2018

1. Sri Sarbesh Sarkar, S/O. Late Rabindra Sarkar, R/O Vill.: -Charipara, Ramthakur Para, P.O & P.S:- Amtali, District:-West Tripura.
2. Sri Dipak Deb, S/O. Nirode Bihari Deb, R/O Vill.: -A.D. Nagar, P.O & P.S:-A.D. Nagar, District:-West Tripura.
3. Sri Mani Sankar Das, S/O. Late Dinesh Chandra Das, R/O Vill.: -Sidhi Ashram, P.O:-Sidhi Ashram, P.S:-A.D. Nagar, District:-West Tripura.
4. Sri Sankar Bhowmik, S/O. Subhash Bhowmik, R/O Vill.: -A.D. Nagar, Ramthakur Para, P.O & P.S:-A.D. Nagar, District:-West Tripura.
5. Sri Prantosh Rakshit, S/O. Sri Pradip Rakshit, R/O:-Amtali, Adarsha Para, P.O & P.S:-Amtali, District:-West Tripura.

----Petitioner(s)

Versus

1. The State of Tripura, represented by its Secretary-cum-Commissioner, Food, Civil Supplies and Consumer Affairs Department, Government of Tripura, P.O:-Kunjaban, P.S:-New Capital Complex, District:-West Tripura.
2. The Additional Secretary and Director, Food, Civil Supplies and Consumer Affairs Department, Government of Tripura, P.O:-Kunjaban, P.S:-New Capital Complex, District:-West Tripura.

-----Respondent(s)

For Petitioner(s)	: Mr. Arijit Bhowmik, Advocate, Mr. Ankan Tilak Paul, Advocate.
For Respondent(s)	: Mr. D. Sharma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment : **30th June, 2020.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

Petitioners have prayed for a direction to the respondents to release the pay and allowances in the regular scale from the date of their regularization on notional basis. This prayer arises in following background:-

2. The petitioners were engaged as full time casual workers by the department of Government of Tripura. The State Government had formulated a policy for regularization of DRW and full time casual workers circulated under memorandum dated 21.01.2009. The petitioners were entitled to be regularized in terms of the said policy upon completion of 10 years of service as full time casual workers. Since the department did not take any action for regularization of the petitioners, they filed WP(C) No.41 of 2017 and connected petitions before the High Court. These petitions were disposed of by a common judgment dated 11.07.2017 in which the Court gave following directions:-

“16. The petitioners cannot be denied the benefit of regularisation as they have rendered service for more than ten years (14 years at a stretch) as the casual workers. They need security of their employment. As stated earlier, since they were/are allowed to continue for such long years, the

concurrence of the Finance Department is deemed. Now the respondents are bound to regularise them from the date when they had completed ten years of service without break in the casual employment under their policy of regularisation.

17. Having held so, the respondents are directed to regularise the petitioners with effect from the next date on completion of ten years of service within a period of six months from today on scrutinizing their individual records. But it is made clear that they would get the regular scale with effect from the date of completion of ten years of service in terms of the memorandum dated 21.01.2009.

With these observation and directions all these writ petitions stand allowed to the extent as indicated above.

There shall be no order as to costs.”

3. Pursuant to the said directions, the department first issued an order dated 12.01.2018 granting regularization to the petitioners and placing them in the regular scale, however, with prospective effect. Thus, by the said order of regularization dated 12.01.2018 the respondents neither granted regularization from the due date nor allowed the benefit of pay and allowances for the past period. Complaining that the said order was not in consonance with the decision of this Court dated 11.07.2017 in the above mentioned group of petitions, these petitioners filed contempt petition being Cont.Cas(C) No.29 of 2018. During the pendency of the contempt petition,

the respondents passed a fresh notification dated 14.06.2018 recording the approval of the Government for regularization of the petitioners. They would be allowed regular scales of pay on completion of 10 years of service with retrospective effect. Pursuant to the said approval of the Government mentioned in the said notification dated 14.06.2018 the respondents passed a formal order dated 20.06.2018 granting regularization to the petitioners upon completion of 10 years of service with retrospective effect from the dates mentioned in the said order. All the petitioners were granted different dates of regularization depending on their initial engagements. Accordingly, all the petitioners were regularized with retrospective effect upon completion of 10 years of their initial engagements. The respective dates of regularization of the petitioners were in the range of 01.02.2013 to 01.07.2013.

4. The notification dated 14.06.2018 was placed before the High Court in the contempt petition. Whereupon the contempt petition came to be disposed of by an order dated 18.06.2018 in following terms:-

“Mr. N. Chowdhury, learned GA appearing for the respondents has submitted the notification No.F.2-1(2)-ESTT/DF/2011(Part-I)/5801-06 dated 14.06.2018 wherefrom it clearly transpires that the direction of this court which has been alleged to have been violated by the respondent has been complied with.

Mr. A. Bhowmik, learned counsel appearing for the petitioner has fairly submitted that the petitioner will not pursue the proceeding any further in the emerged circumstances and accordingly this proceeding is closed. Notice as served on the respondent stands discharged.

A copy of this notification dated 14.06.2018 shall be made part of the records.”

5. Despite the said notification dated 14.06.2018 and subsequent order dated 20.06.2018 regularizing the petitioners with retrospective effect from due dates, the respondents did not pay the arrears of salary for the earlier period. The petitioners thereupon issued a legal notice dated 09.08.2018 calling upon the respondents to release the arrears of salary of the petitioners. In reply to the said notice, the Addl. Secretary & Director of Food, Civil Supplies and Consumer Affairs Department replied under the communication dated 05.09.2018 in which it was stated as under:-

“Sir,

This refers to your Legal Notice on behalf of Sri Prantosh Rakshit and 04 others dated 09.08.2018. In this context, it is to inform you that the Department has already complied with the Judgment and Orders passed in W.P.(C) No.41 of 2017, W.P.(C) No.42 of 2017, W.P.(C) No.43 of 2017, W.P.(C) No.44 of 2017 and W.P.(C) No.45 of 2017 all dated 11.07.2017 of the Hon’ble High Court of Tripura by allowing regular scale of pay on completion of 10 years of service with retrospective effect from the date mentioned at

Col.-7 vide this office Order No.F.2-1(2) ESTT/ DF/2011 (Part-1)/6023-30 dated 20.06.2018.

2. In this connection, further clarification had also been made from this end to the Officer-in-Charge, Central Stores (Head of office & DDO) vide this office letter No. F.2-1(2) ESTT/DF/2011(P-1)/6543 dated 04.07.2018 (copy enclosed) that pay of Sri Prantosh Rakshit and 04 others should be fixed notionally from the date as mentioned in Col. No.7 of the aforesaid order and financial benefit shall be payable with effect from the date of joining to the post.

3. The similar nature of the Judgment and Order dated 31.08.2017 delivered in W.P.(C) No.1085 of 2016 of the Hon'ble High Court has also been complied with vide this office notification dated 03.08.2018 which is ended with certain observation of the Hon'ble High Court on 23.08.2018 in Cont. Case (C) No.34 of 2018 in respect of Sri Ajoy Kr. Acharjee, wherein the petitioner has after scrutiny of the said notification submitted that he would not prosecute the proceeding further.

4. Hence, there is no such violation of the Court's order by the notice receivers.

This is for your information please.”

6. Having heard learned counsel for the parties and having perused documents on record, it emerges that in the previous round of litigation when the petitioners had approached the High Court seeking regularization of their services in terms of the Government policy, the High

Court in the judgment dated 11.07.2017 had issued directions for regularizing the services of the petitioners from due dates on completion of 10 years from initial engagement. It was clarified that they would get their regular scale with effect from the date of completion of the said period of 10 years in service in terms of memorandum dated 21.01.2009. Thus, clearly the intention of the Court and the direction issued was for regularizing the petitioners from due dates for all purposes including the arrears of pay and allowances. There was no indication in the said order that though the petitioners will be granted regularization for the past period, such regularization would be notional and actual pay and allowances would be given only after the order for regularization is passed. We must read the directions contained in paragraph-17 of the said judgment accordingly. In the first sentence of the said paragraph the Court granted six months to comply with the directions for regularization. In the second sentence it was clarified that the petitioners would get the regular scales of pay from the due dates of completion of 10 years of service from initial engagement. No other interpretation of this judgment is possible.

7. When the respondents in purported compliance of the said directions issued an order dated 12.01.2018 granting regularization in service to the petitioners from the date of the order, the petitioners

approached this Court complaining of willful defiance of the Court's directions. The respondents thereupon modified the order of regularization. The Government first issued a notification dated 14.06.2018 granting approval for regularization of the services of the petitioners from due dates with retrospective effect. Based on this approval, the concerned department also issued an order dated 20.06.2018 regularizing the services of the petitioners with retrospective effect from the dates they completed 10 years from initial engagement. This order nowhere provided that the regularization for the past period would be on notional basis and the actual salary would be paid only from the date of the order of regularization. It was on the basis of the Government notification dated 14.06.2018 that the Court closed the contempt petition. If the respondents wanted this issue of the arrears of salary being not part of the directions contained in the judgment of the High Court thrashed out, they ought to have clearly stated so before the Contempt Court. Instead they passed a notification followed up by an order granting regularization from back date without ever making it clear that such regularization for the past period would be only on notional basis. Only once the contempt petition was disposed of and the petitioners complained of non-payment of arrears of salary, this clarification by way of a communication was issued.

8. Looking from any angle the stand of the respondents cannot be countenanced. To begin with, as noted earlier, the decision of this Court was clear and directed the respondents to regularize the services of the petitioners from retrospective dates upon completion of 10 years from initial engagement. This would also include placing them in regular scales from such dates. Secondly, in the memorandum dated 21.01.2009 under which the scheme for regularization was framed, does not provide for withholding of the pay and arrears for the past period. Even the respondents passed an order dated 20.06.2018 granting regularization with retrospective effect. This order was based on the Government approval dated 14.06.2018 which also envisaged such retrospective effect. Neither in the Government approval dated 14.06.2018 nor in the regularization order dated 20.06.2018 there was any narration that such regularization for the past period would only be for the notional purpose and the actual pay and allowances would be paid from the date of order of the regularization. The respondents now cannot turn around and take shelter of the Finance Department not granting concurrence of such payment; which is the sole defence taken in the affidavit-in-reply filed by the respondents, to deny the benefit of the arrears of pay and allowances to the petitioners.

9. In the result, the petition is disposed of with a direction that the respondents shall release the arrears of pay and allowances in favour of the petitioners for the entire period from the respective dates of regularization till they started receiving pay and allowances in regular pay scale. This direction shall be complied with within 4(four) months from today.

10. Petition is disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

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