

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.29/2024

I.A. No.01/2024 in W.A. No.29/2024

Mausumi Khan, daughter of Sultan Khan, wife of Sri Kishan Kumar, resident of South Ramnagar, Akhaura Road, Golchakkar, P.O.-Agartala, P.S.-West Agartala, District-West Tripura, Pin-799001.

..... Appellant(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary to the Finance Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

2. The Commissioner and Secretary, Rural Development Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

3. The Director (Projects), State Level Monitoring Cell of SGSY, Rural Development Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

4. The Chief Executive Officer (District Magistrate and Collector), West Tripura District Rural Development Agency, Government of Tripura, Old Secretariat Complex, P.O.-Agartala, P.S.-West Agartala, District-West Tripura, Pin-799001.

5. The Project Director (Additional District Magistrate and Collector), West Tripura District Rural Development Agency, Government of Tripura, Old Secretariat Complex, P.O.-Agartala, P.S.-West Agartala, District-West Tripura, Pin-799001.

6. The Deputy Secretary, Rural Development Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

.....Respondent(s).

Along with

W.A. No.30/2024

I.A. No.01/2024 in W.A. No.30/2024

Chandan Debnath, son of Late Makhan Debnath, resident of Bibekanandanagar, P.O. & P.S.-Ambassa, District-Dhalai Tripura, Pin-799289.

..... Appellant(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary to the Finance Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

2. The Commissioner and Secretary, Rural Development Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

3. The Director (Projects), State Level Monitoring Cell of SGSY, Rural Development Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

4. The Chief Executive Officer (District Magistrate and Collector), District Rural Development Agency, Dhalai Tripura, Government of Tripura, P.O. & P.S.-Ambassa, District-Dhalai Tripura, Pin-799289.

5. The Project Director (Additional District Magistrate and Collector), District Rural Development Agency, Dhalai Tripura, Government of Tripura, P.O. & P.S.-Ambassa, District-Dhalai Tripura, Pin-799289.

6. The Deputy Secretary, Rural Development Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

.....Respondent(s).

W.A. No.31/2024

I.A. No.01/2024 in W.A. No.31/2024

Suman Dey, son of Adhir Dey, resident of Brahmabari, near CNG Station, P.O. & P.S.-R.K. Pur, District-Gomati Tripura, Pin-799120.

..... Appellant(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary to the Finance Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

2. The Commissioner and Secretary, Rural Development Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

3. The Director (Projects), State Level Monitoring Cell of SGSY, Rural Development Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

4. The Chief Executive Officer (District Magistrate and Collector), Gomati Tripura District Rural Development Agency, Government of Tripura, P.O. & P.S.-R.K. Pur, District-Gomati Tripura, Pin-799120.

5. The Project Director (Additional District Magistrate and Collector), Gomati District Rural Development Agency, Government of Tripura, P.O. & P.S.-R.K. Pur, District-Gomati Tripura, Pin-799120.

6. The Deputy Secretary, Rural Development Department, Government of Tripura, New Secretariat Complex, Agartala, P.O.-Secretariat, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799010.

.....Respondent(s).

For Appellant(s)	: Mr. P. Roy Barman, Sr. Advocate, Mr. Samarjit Bhattacharjee, Advocate, Mr. Koomar Chakraborty, Advocate.
For Respondent(s)	: Mr. Dipankar Sarma, Addl. G.A., Ms. Riya Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA

Date of hearing and judgment: **29th April, 2024.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the appellants and Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the respondents-State.

2. Interlocutory applications seeking condonation of delay of 81 days in all the appeals are allowed and disposed of on being satisfied with the explanations urged.

3. All these appeals are being taken together and disposed of by the common judgment since all raise common issues though arise out of separate judgments rendered by the learned Writ Court dismissing their writ petitions.

4. The writ petitioners were engaged as Data Entry Operator under the District Rural Development Agency (DRDA, for short) in the year 2007. They were re-designated as Senior Computer Assistant on fixed pay basis by a conscious order of the DRDA in the year 2010. Meanwhile, the Government of

Tripura came out with a notification dated 28.04.2010 which is Tripura State Civil Services (Revised Pay) Rules, 2009. Reliance has been placed upon Clause 2(a)(i) and (ii) of the notification dated 28.04.2010 which has also been extracted in the impugned judgment to submit that the rules mandate that Data Entry Operators or Computer Operators or Sr. Computer Assistants shall be re-designated on fixed pay as Senior Computer Assistant in the concerned departments.

5. Learned senior counsel for the petitioners has also referred to the specific statement in paragraph-(ii) of Clause-2(a) which requires cases of such persons to be considered for regularization in compliance of the existing Government policy applicable for employees recruited on fixed pay basis against fixed pay posts created by keeping abeyance the regular scale posts subject to fulfillment of other required criteria. It also provides that while re-designating the incumbents as Senior Computer Assistant on fixed pay basis and at the time of their subsequent regularization as per Government policy, posts personal for the incumbents shall be created for accommodating them. It is submitted that earlier also the writ petitioners had approached this Court in the year 2015/2016 in WP(C) No.194 of 2016, WP(C) No.547 of 2015 and WP(C) No.403 of 2016 on the plea of regularization. They also took a plea that other persons like one Smt. Paramita Choudhury and Sri Rupak Datta were regularized in service. Therefore, on grounds of parity, their cases should also be considered. However, it is submitted that though the learned Writ Court did not equate the status of the petitioners who were contractually engaged with that of Smt. Paramita Choudhury and Sri Rupak Datta who were on fixed pay engagement but it proceeded to issue directions upon the State Government for

regularization of the petitioners. However, the learned appellate Court vide judgment dated 18.01.2021 (Annexure-18) passed in W.A. No.51 of 2019 and analogous cases reversed the decision of the learned Writ Court taking note of the apparent dichotomy in paragraphs-20 and 21 of the impugned judgment. The learned appellate Court, however, also proceeded to observe that the respondents should take into account all relevant aspects of the matter and consider forming a regular cadre with proper pay scales against which the duly qualified candidates can be considered for regular engagements. In that process, the cases of the petitioners, by granting age relaxation considering their past experience can also be considered. Representations made thereafter did not elicit any favourable result. Petitioners, therefore, had to approach this Court once again in the instant writ petitions for regularization of their services as Data Entry Operator and Senior Computer Assistant to which they were re-designated. It is submitted that except these unfortunate writ petitioners many others even under the DRDA have been regularized in service which have also been referred to in the pleadings such as Smt. Paramita Choudhury and Sri Rupak Datta. The petitioners, therefore, cry for justice having worked for more than 17 years. It is submitted that the DRDA is not completely independent of the control of the State Government. Therefore, both the respondent-Government and the DRDA should consider creation of post or regular cadre to absorb these petitioners who continue on the post of fixed pay basis since 14 years by now and 17 years from the date of their engagement as Data Entry Operator.

6. Learned Addl. Government Advocate for the State has strongly opposed the prayer. They have drawn the attention of this Court to the counter affidavit filed in all the cases and also the findings of the learned Writ Court. It

is submitted that the writ petitions were rejected taking into account that DRDA is not the State Government. It is an autonomous agency under whom the petitioners have been engaged on contractual basis and continue to do so till date. Further, the instant project under which the petitioners were initially engaged have been closed but for the interest of the employees they have been brought under a different project namely Tripura Rural Livelihood Mission (TRLM, for short). Therefore, the writ Court has rightly observed that no direction can be issued upon the State Government to create post as it lies within the domain of the employer. Since no post exists, no direction to regularize the services of the petitioners in view of the notification dated 28.04.2010 could be issued. He submitted that the petitioners continue to work on contractual basis under a project in an autonomous organization, i.e. DRDA and no direction or obligation can be cast upon the State Government to create a post for their absorption. It is submitted that the writ petitioners have been approaching this Court again and again with the same plea though no effective relief has been granted in their favour earlier. As such, the present appeals may be dismissed as devoid of merit.

7. On consideration of the rival submissions of the parties, the pleadings on record in the respective appeals and on perusal of the impugned judgments, we are in agreement with the opinion of the learned Writ Court that in the absence of any post, it does not lie within the domain of the Court to direct the employer which in this case is the DRDA, an autonomous agency distinct from the State Government, to create a post for their absorption. Creation of post lies within the domain of the employer and is a decision which factors several considerations including financial burden and the necessity to

create post of a permanent cadre. Moreover, it is also evident that the petitioners' engagements were under a project which was closed and in the interest of such employees, the DRDA has brought them under a different project, i.e. TRLM. As such, their engagement under a project implies an implicit condition that it could not entail permanent absorption unless the rules so permit or a regular cadre for absorption of such contractual employees is created. Since the DRDA is an autonomous body distinct from the State Government, the State Government cannot either be obligated to bear the responsibility of creating such post under the DRDA or bear its financial burden. As such, this Court is constrained from issuing any specific directions for regularization of the petitioners in the absence of specific rules under the DRDA and also in view of the fact that the engagement of the petitioners is on contractual basis under a project of the DRDA.

8. Therefore, we do not find any ground to interfere in the impugned judgments. The writ appeals are accordingly dismissed.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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