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**(2015) 07 TP CK 0071**  
**In the Tripura High Court**  
**Case No : WP(C) No. 243 of 2010**

Pran Krishna Das

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

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**Date of Decision :** 28-07-2015

**Acts Referred:**

**Citation :** (2015) 07 TP CK 0071

**Hon'ble Judges :** S.C. Das, J

**Bench :** Single Bench

**Advocate :** S. Deb, Senior Advocate and P.K. Pal, for the Appellant; S. Chakraborty, Addl. G.A., Advocates for the Respondent

**Final Decision :** Disposed off

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## Judgement

S.C. Das, J—Heard learned senior counsel, Mr. S. Deb, assisted by learned counsel, Mr. P.K. Pal for the petitioner and learned Addl. G.A., Mr. S. Chakraborty for the State respondents.

2. It is, inter alia, contended by the petitioner that he belongs to Scheduled Castes community having academic qualification of Class VIII pass and was also having with a valid driving licence for driving light, medium and heavy vehicles. By issuing a letter of engagement dated 09.06.1989 the petitioner was engaged as a Casual Driver on Muster Roll, for driving official vehicle bearing No. TRG-930 of the office of Horticulture, North Tripura, Kumarghat on "no work no pay" basis w.e.f. 02.05.1989. From the date of such engagement he has been working as a driver in the Department of Horticulture under the Directorate of Agriculture of the Government of Tripura. His such engagement as a Casual Driver was concurred by the Finance Department, which was communicated by a letter dated 19.08.2004 (Annexure-P/2 to the writ petition).

3. Pursuant to the announcement made in the Budget Speech of 2005-06, the Government of Tripura, through the Finance Department issued Memo. dated 04.03.2006 (Annexure-P/3 to the writ petition) and thereby adopted a policy of

regularizing the services of all DRW/Contingent Workers, who have completed 17(seventeen) years of service as on 31.03.2005 in various Departments of the Government of Tripura and the copy of that Memo. dated 04.03.2006 was circulated to all Departments of the Government of Tripura with a view to implement the policy w.e.f. 01.02.2006. The petitioner did not complete seventeen years of service by that time, and therefore the petitioner could not avail the benefit and/or the benefit was not extended to the petitioner.

By another Notification dated 19.02.2007 (Annexure-P/4 to the writ petition), the Finance Department of the Government of Tripura decided that the Casual Workers engaged in Agriculture, etc. departments who were continuously under employment for three years and thereby worked at least 240 days in each year, subject to the condition that the appointing authority satisfied with the quality of their work, conduct, character and to their suitability for employment as Permanent Labourer, may be absorbed as Permanent Labourer in those departments.

4. Following the announcement in the Budget Speech of the year 2006-07, Finance Department by Memo. dated 18.04.2007 (Annexure-P/5 to the writ petition) announced that qualifying service for regularization in case of DRW/Casual/Contingent workers shall be 15(fifteen) years in lieu of seventeen years as was declared earlier as on 31.03.2006. The petitioner, since completed fifteen years of service in the meantime as a Casual Worker(Driver) was entitled to be regularized but he was not regularized by the respondents. Subsequently, as a follow up measure of the Budget Speech of 2007, Finance Department issued Memo. dated 07.11.2007 (Annexure-P/6 to the writ petition) requesting all departments to send names and particulars of the DRW/Contingent/Fixed Pay workers who have completed 15(fifteen) years of service as on 31.03.2007 and were engaged with prior concurrence of the Finance Department for consideration of their regularization in service. Respondent No. 5, thereafter by writing a letter dated 26.11.2007 (Annexure-P/7 to the writ petition) sent a list of twelve persons to respondent No. 4 who had been working as DRW(Driver)/DRW/Casual Labourers posted in the office of the Deputy Director of Horticulture, North Tripura, Kailashahar. Though in terms of Memo. dated 07.11.2007 there was no bar for regularization of service of the petitioner being a Casual Worker(Driver), the respondents in violation of the policy decision of the Government did not give effect to the policy decision in the case of the petitioner, and the respondent Nos. 1, 2, 4 and 5 rolled the ball to the Court of respondent No. 3, i.e. the Transport Department in the matter of regularization of service of the petitioner in the post of Group-D(Driver) in spite of having 52 clear vacancies out of 105 sanctioned posts and in spite of the fact that the service of the petitioner has been utilized by the respondents from 02.05.1989 without any break.

Respondent No. 4 by a letter dated 06.09.2008 (Annexure-8 to the writ petition) made a communication to respondent No. 3 for formal approval of the

employment of drivers from the Casual Labourers/Permanent Labourers who have been performing as drivers with a view to put forward a proposal further to the Finance Department. It was also stated in the said letter that out of 105 numbers of sanctioned post of Drivers, 52 numbers were lying vacant since long and that the Casual Labourers/Permanent Labourers who have been performing duties as Driver in the Department should be provided justice by way of regularizing their employment in the pay scale of Rs. 3700-7100/- on humanitarian ground. The said communication was made by respondent No. 4 after obtaining suggestion from the Finance Department in a note sheet to re-submit the proposal after obtaining the view of the Transport Department. Thereafter, indicating a reference to the communication of respondent No. 3 dated 26.11.2008, respondent No. 5 communicated a letter dated 18.12.2008 (Annexure-P/10 to the writ petition) with the caption, "Rectification in respect of Name Title, Place of posting of Permanent Labour & DRW under Dy. Director of Horticulture(North), Kumarghat" whereby the name of the petitioner was put at Sl. No. 2167 with designation as "Permanent Labour(Driver)(SC) and furnished his date of engagement as Permanent Labour and other particulars. Thereafter, a draft seniority list of Permanent Labourers was declared upto 01.01.2007 in respect of the persons engaged on regular basis in the Department of Agriculture by the respondent No. 4 vide Memo. dated 07.07.2009 (Annexure-14 to the writ petition), wherein the name of the petitioner was placed at Sl. No. 2287. Subsequently, quoting a reference dated 02.03.2007, respondent No. 5 communicated a letter dated 05.03.2009 (Annexure-P/13 to the writ petition) to the respondent No. 4, again furnishing the names of 12 DRW/Contingent/Permanent Labourers/P.T. Workers, who had been engaged with the concurrence of the Finance Department, wherein out of 12 DRWs/Permanent Labourers posted in the office of respondent No. 5, the name of the petitioner was mentioned at Sl. No. 1 showing his status as DRW(Driver). It is further contended by the petitioner that DRW(Drivers), namely Manindra Kr. Debnath and Sudip Datta who had been working in the office of the SDM, Dharmanagar were regularized in the post of Driver(Group-D) and a copy of that engagement letter and their joining report annexed as Annexure-P/11 and Annexure-P/12 to the writ petition. Since the petitioner was not regularized as Driver in spite of having qualified period of service of fifteen years as required as on 31.03.2006 in terms of policy decision of the Government announced by Memo. dated 18.04.2007 (Annexure-P/5) the petitioner submitted representation dated 03.03.2008 (Annexure-P/16 to the writ petition) addressing respondent No. 4 and sought remedy of the discriminatory treatment but his grievance was not redressed. Ultimately, he issued a notice through his engaged counsel Mr. P.K. Pal on 24.03.2010 (Annexure-P/17 to the writ petition) and in response to that notice the respondent No. 4 by writing a letter dated 23.04.2010 (Annexure-P/18) informed that the recruitment of drivers is made by the Transport Department as a Nodal Department and as such the Agriculture Department has no role in respect of providing regular employment to the petitioner as a regular driver by any means as per the existing rules. A copy of the recruitment rules of

Transport Department in respect of drivers was enclosed. Since the respondents did not regularize the service of the petitioner even after repeated persuasion and representation/demand notice the petitioner filed the writ petition seeking direction to the respondents to regularize his services in terms of policy decision dated 18.04.2007 (Annexure-5 to the writ petition) with effect from the date on which he completed 15(fifteen) years of service as a Casual Worker(Driver) and further prayed for direction to respondent No. 3 to appoint him to the post of Driver with retrospective effect by way of one time relaxation of the Tripura Government Vehicles Drivers Service Rules, 1979.

5. Respondents by filing counter affidavit, inter alia, contended that the petitioner was initially engaged as a Casual Labour but since he had a valid driving licence he was working as a Driver on "no work no pay" basis. He was working as a Casual Labour and later on designated as a Permanent Labour. The Agriculture Department had no authority to provide appointment to the post of Driver. The Transport Department is the sole authority in respect of appointment to the post of Driver since the post of Driver belongs to cadre service. Agriculture Department had vacancy of 52 numbers in the post of Driver. Transport Department has to follow the guidelines and provisions of the Tripura Government Vehicles Drivers Service Rules, 1979 in respect of sponsoring the names to the Departments for appointment of Driver and as per the Rules all vacant post of Driver will be filled up by direct recruitment and by promotion from regular Group-D employees having driving licence with three years of experience in driving. 70 percent posts were for direct recruitment and the remaining 30 percent were for promotional posts. Both the direct and promotional posts were to be filled up by candidates selected by the Selection Committee on the basis of interview and practical tests. Thereafter, Transport Department sponsors the selected candidates to the requiring departments for issuing offer of appointment to the post of Driver by the concerned departments. It is contended by the respondents that there was no scope for regularization of Contingent/Part Time Workers/Daily Rated Workers performing the works of driving a Government vehicle, against a regular Driver post in the cadre service of Drivers. In this respect Transport Department issued circulars forbidding other Departments not to engage any staff as Contingent/PTW/DRW for driving Government vehicles. Therefore, the case of the petitioner for regularization of his service in the post of Driver was not acceptable as there was no scope to regularize a Permanent Labour against a regular Driver post just because his service was utilized for driving of a Government vehicle, without observing the procedure of the Tripura Government Vehicles Drivers Service Rules, 1979.

6. It is an undisputed rather an admitted fact that the petitioner was engaged as a Casual Worker (Driver) on muster roll basis for driving a Government vehicle No. TRG-930 on "no work no pay" basis w.e.f. 02.05.1989 vide letter of engagement dated 09.06.1989 (Annexure-P/1 to the writ petition). From the date of engagement the petitioner had/has been working as a Driver in the office of respondent No. 5. It is an undisputed position that the petitioner was basically

engaged as a Casual Labour but was entrusted with the job of driving the Government vehicle since he was having a valid driving licence. It is also an undisputed fact that his such engagement as a Casual Worker(Driver) was approved by the Finance Department along with some other Daily Rated Workers (Annexure-P/2 to the writ petition). It is, therefore evident that the petitioner was initially engaged as a Casual Worker(Driver) and was entrusted with the job of driving a Government vehicle and his such engagement was approved by the Finance Department. It is also an undisputed rather an admitted fact that Government of Tripura in the Finance Department issuing Memo. dated 04.03.2006 (Annexure-P/3) made an announcement to regularize the Daily Rated Workers/Contingent Workers who have completed 17(seventeen) years of service as on 31.03.2005 and at that point of time the petitioner did not complete 17(seventeen) years of service. After the Budget Speech of 2006-07, the Finance Department of the Government of Tripura issued Memo. dated 18.04.2007 and under that Memo. it was announced that the Daily Rated Workers/Casual Workers/Contingent Workers who have completed fifteen years of service as on 31.03.2006 shall be regularized. Memo. dated 18.04.2007 is very relevant which is marked as Annexure-P/5 and for fair appreciation let us reproduce here the said Memo. which reads as follows:

"No.F.10(2)-FIN(G)/2005(Part) GOVERNMENT OF TRIPURA DEPARTMENT OF FINANCE

Dated, Agartala, the 18th April 2007

#### MEMORANDUM

Subject: Regularization of services of DRWs/Casual/Contingent Workers.

In pursuance of announcement made in the Budget Speech of 2006-07, names and particulars of DRWs/casual/contingent workers were collected by the Finance Department from the Departments and accordingly compiled. After compilation of the names and particulars of the workers furnished from the Departments, a Memorandum was issued from the Finance Department vide No. F.10(2)-FIN(G)/2005 dated 22-2-2007, for requesting the concerned Administrative Department to take following actions:

- i) DRW/Casual/Contingent workers who have been engaged on a full time basis in different departments with or without concurrence of Finance Department and have completed 15 years of service as on 31-3-2006 other than Permanent Labourers, Part-time workers, Anganwadi Workers and Helpers, Home Guards, Teachers and Workers engaged under SSA and other Schemes/programmes, should be considered for regularization as per names attached.
- ii) Requirement of age as per Recruitment Rules will be deemed to be relaxed for the purpose of regularization.
- iii) Requirement of educational qualification as per Recruitment Rules will be deemed as relaxed for regularization(applicable only for Group D posts). In case

of DRW/and contingent Workers where appointment is being made in group-D, required educational qualification as required under concerned R.R. must be ensured by concerned departments before issuing formal appointment letter.

iv) Except age and educational qualification mentioned in point(iii) all other criteria as per relevant Recruitment Rules including reservation roster will have to be followed for this process of regularization.

v) Regularization of all casual workers indicated in the enclosed list will have to be considered against Group-D posts only irrespective of their educational qualification.

vi) Subject to fulfillment of above conditions, the eligible workers will be provided pay scale in the relevant grade for their regularization which will take effect from 1st January 2007."

2. However, after circulation of the earlier Memorandum particulars in respect of cases of certain DRWs furnished from the Department were found to be at variance with the facts/details as contained in the relevant record.

3. Taking this fact into account, Departments were remained in the earlier Memorandum to ensure scrutinizing the records and particulars of the workers whose names and particulars were indicated in the annexure to ascertain their eligibility for regularization. This point is now reiterated to prevent any repeat of the same mistakes/distortion. The Departments are further requested to ensure taking effect disciplinary action against officials responsible for such distortion/furnishing of incorrect information. The appointment authorities are further remained that is it the personal responsibility to get themselves satisfied about correctness of particulars of the concerned workers after verification of records before taking step for regularization.

4. All concerned are directed to ensure strict implementation of the above directions.

Sd/- 18/4/07 (S.K. Roy) Commissioner & Secretary to the Government of Tripura."

7. In view of the above Memorandum of the State Government the petitioner being engaged as a Casual Labour on 02.05.1989 had completed 15(fifteen) years of continuous service as a Casual Labour(Driver) and he was due to be regularized as a Group-D staff under the respondent Nos. 4 and 5. The respondents did not do so rather at a subsequent stage by issuing communication dated 18.12.2010 (Annexure-P/10 to the writ petition) shown the petitioner as a Permanent Labour(Driver)(SC). There is nothing to show that the petitioner at any point of time opted for categorizing him as a Permanent Labour in place of Casual Labour(Driver). Memo. dated 07.11.2007 (Annexure-P/6 to the writ petition) shows that as a follow up measure of the Budget Speech 2007 all the Departments were again asked to send the names and particulars of DRW/Contingent/Fixed Pay Workers who completed 15(fifteen) years of service as on

31.03.2007 and pursuant to that letter respondent No. 5 by writing letter dated 26.11.2007 (Annexure-P/7 to the writ petition) sent the list of twelve DRW/Contingent/Fixed Pay Workers working under the respondent No. 5, wherein, the name of the petitioner was listed in Sl. No. 1. Even thereafter, the petitioner's service was not regularized pursuant to Memo. dated 18.04.2007 and his case was kept pending. He made several representations and the respondent Nos. 4 and 5 forwarded his name on several occasions for regularizing his service, but ultimately, it was not so done though it was the duty of respondent Nos. 4 to regularize the service of the petitioner pursuant to Memo. dated 18.04.2007 (Annexure-P/5 to the writ petition). By issuing advocate's notice the petitioner demanded his regularization in the post of Driver but the respondents by writing reply to the said letter (Annexure-P/18 to the writ petition) contended that the recruitment to the post of Driver is made by the Transport Department as Nodal Department as per the provisions of the Tripura Government Vehicles Drivers Service Rules, 1979 and that the Agriculture Department has no authority to regularize the service of the petitioner in the post of Driver. It is true that the service of Driver is a cadre service and such service is regulated as per the provisions of the Tripura Government Vehicles Drivers Service Rules, 1979. The petitioner was appointed substantially as a Casual Labour(Driver). Since he was having with a valid driving licence as a Casual Labour he was entrusted with the job of driver in the office of respondent No. 5 and since long he is driving official vehicle of the respondent No. 5 and that fact is not disputed. Be that as it may, the petitioner, as I find, was/is substantially a Casual Labour having driving licence and so he was entrusted with the job of driving vehicle and he was doing the job. Such entrustment of the job of driving vehicle does not necessarily entitle the petitioner to be absorbed in the post of Driver which is a cadre post and is regulated by the service Rules, i.e. the Tripura Government Vehicles Drivers Rules, 1979. But the petitioner since was substantially appointed as a Casual Labour, he was entitled to be regularized as a Group-D staff in view of Memo. dated 18.04.2007 and the respondent No. 4 was responsible to regularize his service in a Group-D post. As per the Tripura Government Vehicles Drivers Service Rules, 1979 respondent No. 4 has no authority to regularize the service of the petitioner in the post of Driver. Rule 22 of the Rules of 1979 empowers the State Government to relax any provision of the Rules and a person after relaxation of the Rules may be engaged as a Driver but it would be depending on the State Government if such an approach is made by the administrative Department for relaxation of the Rules. The petitioner though made a prayer that after relaxation of the Rules he may be regularized in the post of Driver, I find no justification at all to give such a direction to the official respondents to relax the Rules in the absence of any prayer made by the petitioner to his authority and the authority recommending his prayer to the Nodal Department for relaxation of the Rules. There were vacant posts of Driver in the Agriculture Department of the Government of Tripura at the relevant point of time and the Agriculture Department would approach the Nodal Department as per the Rules of 1979 for relaxation of the provisions of the Rules to regularize the services of the

petitioner like other persons but no such attempt was made by the administrative Department. I find no justification at all to give any direction to the respondents to relax the Rules with a view to regularize the petitioner as a Driver. But so far as the Memo. dated 18.04.2007 is concerned the petitioner completed 15(fifteen) years of service as on 31.03.2006 and so he was entitled to be regularized as a Group-D staff under the respondent Nos. 4 and 5. The petitioner, being in continuous service as a Casual Labour was entitled to be regularized in view of Memorandum dated 18.04.2007 and the respondent Nos. 4 was bound to regularize him as a Group-D staff under the respondent No. 5.

8. Accordingly, the writ petition is partly allowed. Respondent No. 4 is directed to regularize the service of the petitioner as a Group-D staff in terms of the policy decision of the State Government in the Finance Department vide Memorandum dated 18.04.2007 with all notional service benefits. The exercise should be completed within 45(forty five) days from today.

9. With the above observations and directions the writ petition stands disposed of. Parties to bear their own costs.