

(2017) 01 TP CK 0011
In the Tripura High Court
Case No : WP(C) 398 of 2014

Sri Jiban Krishna Debnath

APPELLANT

Vs

Tripura State Electricity Corporation Ltd.

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Citation : (2017) LIC 880

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

Bench : Single Bench

Advocate : P Roy Barman, DC Nath, S Chakraborty

Final Decision : Disposed Off

Judgement

Mr. S.C. Das, J.(Oral)—Heard learned counsel, Mr. P Roy Barman for the petitioner, learned counsel, Mr. DC Nath for the respondent Nos. 1 to 5 and learned Addl. GA, Mr. S Chakraborty for the respondent Nos. 6 and 7.

2. Bereft of unnecessary details, the case of the petitioner is that he was engaged on 01.09.1985 by Sub-Divisional Officer (Electrical), Jirania Electrical Sub-Division on fixed pay basis and to that effect a letter was issued by the said SDO (Electrical) on 27.03.1989. He was paid a fixed amount of Rs.230/- per month by the SDO (Electrical) by order dated 20.11.1989. Subsequently, by another letter dated 09.06.1992 he was engaged as a Helper worker. It is the case of the petitioner that he was thereafter engaged as a Daily Rated Worker (DRW) and his wages was also paid as DRW. In support of his contention he has relied on various documents which show that he was treated/considered as a Daily Rated Worker/Contingent worker in the office of the SDO (Electrical), Jirania which was subsequently re-designated as Sr. Manager (Elect.), Jirania under the respondent No.1.

3. He made representation for regularizing of his service as per the declaration of the State Government but he was treated as part-time worker by impugned letter dated 03.02.2014 (Annexure-P/11 to the writ petition) issued by the

Deputy General Manager, Jirania Electrical Division and by filing this writ petition he has challenged it alleging that he has been singled out from the group of similarly situated persons and deprived of the benefit of regularization in consonance of the decisions taken by the State government in respect of the DRW/contingent workers.

4. The respondent Nos. 1 to 5 and 6 and 7 by filing separate counter affidavit contended that the petitioner was engaged as a part-time worker and was never engaged as a DRW and/or a contingent worker and, therefore, does not come within the purview of the scheme formulated by the State government for regularization of DRWs/contingent workers. In support of their contention, the respondents also relied on the same documents annexed with the respective counter affidavit.

5. It is an admitted position that State Government had taken a decision to regularize the services of DRWs/contingent workers, etc., who have completed 10 years of service in the government departments or PSUs, etc. It is also not in dispute that the petitioner was engaged by SDO (Electrical) Jirania on 01.09.1985 at a fixed monthly wage of Rs.230/-. His date of birth is 09.01.1959 and from 01.09.1985 he has been working continuously under the Electric Department of the Government of Tripura and, thereafter, under the respondent No.1 without any break. It is the case of the petitioner that he was treated as a DRW/contingent worker by the Department.

6. Annexure-P/2 to the writ petition, an office order dated 03.10.2008 issued by the Senior Manager, (Electrical) Jirania Electrical Sub- Division shows that the petitioner was directed to work during Durga Puja festival of that year and his status was shown as DRW.

Annexure-P/3 is a letter dated 06.08.2007 written by the said Senior Manager addressed to the Deputy General Manager specifically mentioning the petitioner as a contingent worker working under the Jirania (Electrical) Sub-Division.

Annexure-P/4 is a letter dated 28.07.2007 written by the DGM (Corporate) of TSECL addressed to the Deputy General Manager, Electrical Division No.III, Agartala wherein the petitioner was shown as contingent worker.

Similarly, in Annexure-P/5, a wage bill dated 22.02.2013 the petitioner was shown as DRW.

Annexure-P/6, a list prepared by the department shows the name of the petitioner at Sl. No. 70 as a contingent worker.

Annexure-P/7 is a list of DRWs/contingent workers prepared by the Power Department which shows the name of the petitioner at Sl. No. 9 with the category as DRW.

Annexure-P/13, a letter dated 18.08.2008 written by DGM, Jirania to the DGM, Corporate office of TSECL shows that it was a report submitted on the query of

TSECL about the status of the petitioner and in that report DGM, Jirania clearly mentioned that the petitioner was working as a DRW.

So, all these documents clearly indicate that the petitioner was either working as a DRW or as a contingent worker and not a part-time worker. There is no specific engagement letter in the post of DRW or contingent worker.

7. All appointments should be made according to rules/regulations of the government and/or government undertakings etc., in a fair and transparent manner. It is absolutely clear that the engagement of the petitioner was not made in accordance with any rules or regulations or in a transparent manner. But the State Government took a conscious decision to regularize the services of such employees who worked for more than 10 years as a DRW/contingent worker. The only stand taken by the respondents is that the petitioner was working as a part-time worker and not as a DRW or contingent worker.

8. The letter of the petitioner which is annexed as Annexure-R4 to the counter affidavit of the respondent Nos. 6&7 was made by the petitioner for enhancement of monthly salary ventilating his hardship that he was working from 1985 and drawing a minimum amount and prayed for increasing it. It was in the year 1995. There are various documents to show that after 1995 also he was shown as contingent worker and/or DRW. The petitioner is in service for last more than 32 years and he has not been regularized only on the plea that he is not a DRW or a contingent worker. It is an admitted position that the respondents utilized the services of the petitioner either as a part-time worker or as a DRW/contingent worker. I find enough documents/communications made by the Department showing the petitioner as a contingent worker/DRW. Those cannot be said to have been taken unconsciously by the respective officials of the Electric Department and/or the Corporation.

9. While a person has served for such long years in the department without any break, at the fag end of his service he cannot expect that his service will not be regularized though the State Government has taken a conscious decision to regularize the services of such irregularly appointed persons. The State Government, could have discontinued the services of those people at the initial stage when they were found to be not appointed according to the prescribed rules and procedure, but on the contrary, the government took a decision to recognize them who have served for 10 years in the capacity as DRW/contingent workers, etc. etc. Since there are lot of communications which show that the petitioner was working as a DRW/contingent worker, he is entitled to be regularized under the scheme declared by the State Government. Simply because in a letter in the year 1995 the petitioner mentioned his status as a part time worker it cannot change the status of the petitioner, what the respondents have stated in the communications made in different documents as stated hereinbefore.

10. In view of the above discussion, I am of the considered opinion that letter

No. F.1(19)/DGM/ED/JRN 5356-57 dated 03.02.2011 (Annexure P/11 to the writ petition) issued by the respondent No.5 in respect of the petitioner is arbitrary and in contradiction of the earlier communication/order made by the department and hence it is set aside and quashed so far as the petitioner is concerned.

11. The respondents are directed to treat the petitioner as a DRW and/or contingent worker and afford him the benefit of the decision of the State Government and regularize him in service within three months from today. If there is no sanctioned post, supernumerary post may be created for regularizing the petitioner in a suitable post.

12. The writ petition is accordingly allowed and disposed of. No order as to costs.