

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.1263/2016 with WP(C) No.1264/2016
With WP(C) No.1265/2016 with WP(C) No.1294/2016
With WP(C) No.65/2017 with WP(C) No.200/2017

A) WP(C) No.1263/2016.

Shri Mrinal Kanti Ghosh, S/o Lt. Nani Gopal Ghosh,
R/o –Krishnanagar, Pragati Road, P.O. Agartala, P.S. West Agartala,
District – West Tripura.

..... *Petitioner(s).*

Vs.

1. The State of Tripura,
represented by its Secretary-cum-Commissioner,
Department of Transport, Government of Tripura,
P.O Kunjaban, P.S. New Capital Complex,
District – West Tripura.
2. The Commissioner of Taxes and Excise,
Government of Tripura, Gurkhabasti,
P.O. Agartala, P.S. New Capital Complex,
District – West Tripura.
3. Tripura Road Transport Corporation,
represented by its Managing Director,
Krishna Nagar, P.O : Agartala, P.S. West Agartala,
District : West Tripura.

..... *Respondent(s).*

For Petitioner(s) : Mr. Arijit Bhowmik, Advocate.
For Respondent(s) : Mr. D Sharma, Additional G. A.,
Mr. A Nandi, Advocate,
Mr. D Sarkar, Advocate.

B) WP(C) No.1264/2016.

Shri Subodh Kumar Debroy, S/o Lt. Sudhir Kumar Debroy,
R/o – Ramnagar Road No.7, P.O. Agartala, P.S. West Agartala,
District – West Tripura.

..... *Petitioner(s)*.

Vs.

1. The State of Tripura,
represented by its Secretary-cum-Commissioner,
Department of Transport, Government of Tripura,
P.O Kunjaban, P.S. New Capital Complex,
District – West Tripura.
2. The Commissioner of Taxes and Excise,
Government of Tripura, Gurkhabasti,
P.O. Agartala, P.S. New Capital Complex,
District – West Tripura.
3. Tripura Road Transport Corporation,
represented by its Managing Director,
Krishna Nagar, P.O : Agartala, P.S. West Agartala,
District : West Tripura.

..... *Respondent(s)*.

For Petitioner(s) : Mr. Arijit Bhowmik, Advocate.

For Respondent(s) : Mr. D Sharma, Additional G. A.,
Mr. A Nandi, Advocate,
Mr. D Sarkar, Advocate.

C) WP(C) No.1265/2016.

Shri Shyamalendu Bikash Chakraborty,
S/o Lt. Barindra Mohan Chakraborty,
R/o – Bhattapukur Near Bapuji School,
P.O. & P.S. – A. D. Nagar, Agartala, P.S. West Agartala,
District – West Tripura.

..... *Petitioner(s)*.

Vs.

1. The State of Tripura,
represented by its Secretary-cum-Commissioner,
Department of Transport, Government of Tripura,
P.O Kunjaban, P.S. New Capital Complex,
District – West Tripura.
2. The Commissioner of Taxes and Excise,
Government of Tripura, Gurkhabasti,
P.O. Agartala, P.S. New Capital Complex,
District – West Tripura.
3. Tripura Road Transport Corporation,
represented by its Managing Director,
Krishna Nagar, P.O : Agartala, P.S. West Agartala,
District : West Tripura.

..... *Respondent(s)*.

For Petitioner(s) : Mr. Arijit Bhowmik, Advocate.
For Respondent(s) : Mr. D Sharma, Additional G. A.,
Mr. A Nandi, Advocate,
Mr. D Sarkar, Advocate.

D) WP(C) No.1294/2016.

Shri Jiban Krishna Sarkar, S/o Lt. Hare Ram Sarkar,
R/o – Chandinamura, P.O : West Bhubanban,
P.S. West Agartala, District – West Tripura.

..... *Petitioner(s)*.

Vs.

1. The State of Tripura,
represented by its Secretary-cum-Commissioner,
Department of Revenue, Government of Tripura,
P.O Kunjaban, P.S. New Capital Complex,
District – West Tripura.
2. Office of the District Magistrate and Collector,
P.S : New Capital Complex, District : West Tripura.
3. Tripura Jute Mills Ltd.,
represented by its Managing Director, Hapania,
P.O – ONGC, P.S : Hapania, District : West Tripura.

..... *Respondent(s)*.

For Petitioner(s) : Mr. Arijit Bhowmik, Advocate.
For Respondent(s) : Mr. D Sharma, Additional G. A.,
Mr. A Nandi, Advocate,
Mr. D Sarkar, Advocate.

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E) WP(C) No.65/2017.

Shri Makhan Lal Bhowmik, S/o Late Thakur Das Bhowmik,
R/o –Town Rajarbagh, P.O & P.S – R. K. Pur,
District : Gomati Tripura.

..... *Petitioner(s)*.

Vs.

1. The State of Tripura,
represented by its Secretary-cum-Commissioner,
Department of Transport, Government of Tripura,
P.O Kunjaban, P.S. New Capital Complex,
District – West Tripura.
2. Tripura Road Transport Corporation,
represented by its Managing Director,
Krishna Nagar, P.O : Agartala, P.S. West Agartala,
District : West Tripura.
3. The Managing Director, Tripura Road Transport Corporation,
represented by its Managing Director,
Krishnanagar, P.O : Agartala, P.S. West Agartala,
District : West Tripura.
4. The District Transport Officer, Government of Tripura,
Udaipur, P.O & P.S – R K Pur, District – Gomati Tripura.

..... *Respondent(s)*.

For Petitioner(s) : Mr. Arijit Bhowmik, Advocate.
For Respondent(s) : Mr. M Debbarma, Additional G. A,
Mr. A Nandi, Advocate.

F) WP(C) No.200/2017.

Shri Nishi Kanta Badyakar, S/o Late Mukunda Badyakar,
R/o + Vill : Kabiraj Tilla, Stalin Colony, P.O & P.S – A.D. Nagar,
District : West Tripura.

..... *Petitioner(s)*.

Vs.

4. The State of Tripura,
represented by its Secretary-cum-Commissioner,
to the Rural Department, Government of Tripura,
P.O - Kunjaban, P.S. New Capital Complex,
District – West Tripura.
5. The District Magistrate and Collector, West Tripura District,
Government of Tripura, P.O – Agartala, P.S : West Agartala,
District : West Tripura.
6. Tripura Jute Mills Ltd. (A Govt. of Tripura undertaking),
represented by its Managing Director, Hapania, P.O – Hapania,
P.S : Amtali, District : West Tripura.

..... *Respondent(s)*.

For Petitioner(s) : Mr. Arijit Bhowmik, Advocate.
For Respondent(s) : Mr. D Sharma, Additional G. A.,
Mr. A Nandi, Advocate,
Mr. D Sarkar, Advocate.

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HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing : 6th July, 2020.

Date of judgment : 9th July, 2020.

Whether fit for reporting : No.

J U D G M E N T

These petitions arise in common background.

WP(C) No.1263/2016 is a lead case.

[2] Facts in brief are as under :

In WP(C) No.1263/2016, the petitioner was appointed as a Bus Conductor in Tripura State Road Transport Corporation (*'TSRTC' for short*) on 24th November, 1986. Under order dated 7th August, 2001 he was sent on deputation in the State Tax Department to work as a Lower Division Clerk. He continued to discharge duties on deputation. He would have superannuated w.e.f. 31st January, 2011. However, his service was extended by 3(three) months and eventually he retired from service on 30th April, 2011. Case of the petitioner is that he ought to have been absorbed on a permanent basis in Government service, having rendered nearly 10(ten) years of service on deputation. The petitioner has, therefore, prayed for a direction to the State authorities to absorb him in Government service from the date of completion of 5(five) years of service on deputation and to grant all financial benefits including pension and other post-retiral benefits.

[3] The respondents have opposed the petition. An affidavit-in-reply dated 15th March, 2017 has been filed on behalf of TSRTC in which it has

been stated that upon his retirement, the petitioner has been paid his retiral benefits such as gratuity and pension from Employees Provident Fund Organization as is payable to the employees of TSRTC. A copy of an order dated 6th December, 2012 for payment of a sum of Rs.1,91,352/- by way of gratuity to the petitioner is annexed.

[4] An affidavit-in-reply dated 12th April, 2017 is filed on behalf of the State Government in which also it is stated that the petitioner has no right of absorption in the Government service and that after his retirement he had received gratuity and pension as payable to the employees of TSRTC.

[5] In WP(C) No.1264/2016, the petitioner was appointed as a Bus Conductor in TSRTC in the year 1976. He was also sent on deputation to the State Government under an order dated 7th August, 2001 to perform clerical duties. By order dated 6th May 2014, preparatory to his retirement he was repatriated to his parent organization. Shortly thereafter, he retired on superannuation w.e.f 30th June, 2014. He has also prayed for absorption in Government service upon completion of 5(five) years of service on deputation with consequential benefits including pension and other post-retiral benefits.

[6] This petition is also opposed by the respondents on the same grounds as the previous one. They contend that a deputationist has no right of absorption in the borrowing department. The petitioner had retired from service upon which his post-retiral benefits as available to the employees of TSRTC such as gratuity and pension under the Employees Provident Fund scheme had been paid.

[7] In WP(C) No.1265/2016, the petitioner joined the service of TSRTC as a Bus Conductor in the year 1977. He was also sent on deputation to the Government service under order dated 7th August, 2001 to work in clerical post. Preparatory to his retirement, he was repatriated to his parent organization in January/February, 2015. The petitioner retired from service on 28th February, 2015. He has also prayed for absorption in Government service with retrospective effect and consequential benefits.

[8] In WP(C) No.1294/2016, the petitioner joined the service of Tripura Jute Mills in the year 1981 as a Peon. Under an order dated 16th November 2000, the petitioner was sent on deputation to Government service as a Peon. Preparatory to his retirement, the petitioner was repatriated to his parent organization under a memorandum dated 13th July, 2016. For some time, the petitioner resisted this order but eventually joined his parent organization on 7th April, 2016. The petitioner in due course

retired from service w.e.f 30th November, 2016. However, shortly before his retirement he filed the present petition in which he has prayed for a regularisation in Government service upon completion of 5(five) years on deputation with consequential benefits. Opposing the petition, the respondents have filed affidavit contending that Group – D posts in the State organization can be filled up only by way of direct recruitment. The petitioner as a deputationist has no vested right of absorption. In absence of Government policy for permanent absorption of deputationist, mere length of the deputation period would not create a vested right of absorption.

[9] In WP(C) No.65/2017, the petitioner had joined the service of TSRTC as a Lower Division Clerk in the year 1976. He was transferred from TSRTC to District Transport Officer, Udaipur, by an order dated 4th July, 2005. According to the petitioner, though titled as a transfer order it was in fact an arrangement for deputation. The petitioner has, therefore, prayed that he may be absorbed in Government service upon completion of the period of deputation maximum permissible under the rules.

[10] The TSRTC and State Government have filed separate affidavits opposing the petition. In a nutshell it is contended that the petitioner's service was placed on transfer to the District Transport Officer. However, such arrangement cannot be treated as deputation. It is also contended that

upon superannuation the petitioner has received his full post-retiral benefits from the TSRTC.

[11] In WP(C) No.200/2017, the petitioner had joined the service of Tripura Jute Mills as a Peon in the year 1981. In October 2012, the petitioner was sent on deputation under the State Government initially for a period of 2(two) years which was extended from time to time. The petitioner was due for retirement in the month of May 2017. Shortly before that the petitioner filed the said petition in which he has prayed for regularization in Government service with consequential benefits.

[12] The respondents have opposed this prayer contending that the Group – D post in the Government can be filled up only by way of direct recruitment and there is no provision under the recruitment rules for absorption of a deputationist. It is stated that the petitioner was repatriated to his parent organization under order dated 12th February, 2017. It is averred that there is no Government policy for absorption of the deputationist.

[13] In such background, appearing for the petitioners learned counsel Mr. Arijit Bhowmik raised following contentions :

(a) All the petitioners had rendered satisfactory service in the Government organizations on deputation for a long period of time. He would point out that the period of deputation of these petitioners ranged between 10-16 years. Counsel submitted that such uninterrupted and long period of deputation gives rise to a legitimate expectation on part of the deputationists to be absorbed in the borrowing organization.

(b) Counsel submitted that as per the Government notification dated 3rd October 2013, maximum period of deputation in Government service is 3(three) years which can be extended by a further period of one year with permission from the highest authority. He submitted that in case of all the petitioners their period of deputation was extended long beyond the maximum permissible length of deputation.

(c) Counsel submitted that the State Government itself had initiated a process for considering regularization of deputationist such as the petitioners. The State Government is now estopped from reversing such a process.

(d) Counsel submitted that all the petitioners have now retired from service. If they are absorbed in Government service they would receive pension. Counsel relied on a Division Bench judgment of this Court in case of ***Biplabendu Roy Vs. State of Tripura, WA No.21/2016,***

dated 18th July, 2016 in which certain directions were given for regularization of a deputationist.

[14] On the other hand, counsel appearing for the respondents opposed the petitions contending that the petitioners as deputationists had no vested right of absorption. The recruitment rules did not permit absorption of a deputationist. Mere length of service on deputation would not create any right for regular absorption. They pointed out that in many of the cases the petitioners had retired on superannuation. Upon superannuation they were paid their full post-retiral benefits such as gratuity and the pension payable under the Employees Provident Fund scheme. Petitions were filed long after retirement. Having received post-retiral benefits from the parent organizations without protest, the petitioners cannot claim benefit of regularization at such a late stage. Counsel relied on certain decisions reference to which may be made at an appropriate stage.

[15] Facts are seriously not in dispute and can broadly summarized as thus:

The petitioners, who were the employee of TSRTC or Tripura Jute Mills, were spent on deputation to Government service where they continued to discharge their duties for several years. In almost all cases,

the petitioners were repatriated to their parent organizations in anticipation of their retirements. These petitioners retired from service upon crossing the age of superannuation. In the majority of the cases, the petitioners had retired before the petitions were filed. In couple of cases, the petitions came to be filed shortly before their retirement. In all cases, the petitioners have received their post-retiral benefits from the employer organisations which did not have a pension scheme of their own. The petitioners have received gratuity as per the statutory rules and also pension from the Employees Provident Fund organization. Barring one case where the petitioner was sent to Government service which was titled as transfer, in all other cases all the petitioners were sent on formal deputations. This distinction is not really of any consequence.

[16] I am prepared to proceed on the basis that all petitioners were on deputation to Government service but retired without absorption. Short question is, can the petitioners press for their absorption in Government service as a matter of right, mainly on the ground that they had put in long service as deputationists before they were repatriated and retired. The answer obviously has to be in the negative. The petitioners have not cited any statutory rule which vests any right in favour of a deputationist to be absorbed in Government service upon completion of requisite number of

years of service on deputation. In fact, the respondents have been citing recruitment rules for the respective posts contending that only mode of recruitment to Group - C and D posts is by direct recruitment and appointment by absorption of deputationist is not one of the means of recruitment.

[17] Further, it is well settled in series of judgments of the Supreme Court that a deputationist does not have a vested right of absorption in the service of the borrowing organization. In case of *Kunal Nanda Vs. Union of India and Anr.*, reported in (2000) 5 SCC 362 it was held and observed as under :

“6. On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in *Rameshwar Prasad Vs M.D., U.P. Rajkiya*

Nirman Nigam Ltd. and Others [1999 (8) SCC 381] is inappropriate since, the consideration therein was in the light of statutory rules for absorption and the scope of those rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree need mention, only to be rejected. The stand of the respondent department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e., a degree is a must and essential and that there could no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim.”

[18] In case of *Ratilal B. Soni and Ors. Vs. State of Gujarat and Ors., 1990 (Supp.) SCC 243*, it was observed as under :

“5. The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post. We see no infirmity in the judgment of the High Court and as such we dismiss the appeal. There shall be no order as to costs.”

[19] In case of *Dilip Kumar Saha Vs State of Tripura and Ors., WP(C) No.237/2020*, in an judgment dated 20th March, 2020 Single Judge of this Court had observed as under :

“As per settled law, a deputationist has no right of absorption in the borrowing department. The petitioner was an employee of the said Federation and strictly speaking, was not a Government servant. It was only because the Federation ran into acute financial difficulties that the Government in order to obviate the difficulties of the staff of the Federation, out of sympathetic consideration called for options and protected the services of those who were willing to work in other Government organizations or departments. This option itself clearly provided that those who are not so willing, may apply for VRS. In other words, if the petitioner or any other staff member of the Federation at the relevant time had shown disinclination to work in any other Government organization or department, the Federation would have had no choice but to terminate the service through voluntary retirement. It was only in order to protect the petitioner and other similarly situated employees of the Federation from such premature termination, that the Government out of sympathetic consideration decided to take work from them in other Government organizations or departments. The petitioner thus continued from 2006 till date on deputation basis. Absorption of a deputationist must depend on range of factors, principally the policy of the borrowing department. Therefore, the petitioner has no legal right to insist on being absorbed.

One isolated incident of the year 1999 of absorption of one such deputationist is cited before me. Such considerations and situation prevailing in the year 1999, cannot be applied after two decades. No directions for absorbing the petitioner, therefore, can be passed.”

[20] It appears, as is stated by the petitioners in their rejoinders, that because of surplusage of employees in their parent organizations, the State Government had utilized the services of the petitioners on deputation. In plain terms, if the State Government had not intervened and utilized the services of the petitioners on deputation basis, in all likelihood, the petitioners would have faced possible retrenchment. It was an order to avoid such an unpleasant consequence for a sizeable number of employees of State-owned Corporations that this formula of utilizing the services of permanent employees of such Corporations on deputation seemed to have been devised by the State Government. At no stage, the petitioners ever opposed continued prolonged deputation. In other words, the petitioners never sought repatriation to their parent organizations. As is well settled, deputation is a method of temporarily borrowing the services of an employee of one organization or department by another organization or department. In the process, consent of all three agencies i.e. the employer as the lending organization, the borrowing organization where the employee would be sent on deputation and also that of the employee himself, is necessary. Thus the petitioners consented to be sent on deputation and to continue to work on deputation for long period of time. They now cannot turn around and claim regularization de hors statutory rules and in absence of Government policy.

[21] In case of *Biplabendu Roy(supra)*, the Division Bench of this Court did not lay down an absolute proposition that after long passage of deputation a deputationist would have a vested right for absorption. One of the significant aspects of the matter in the said case was that the State Government which was the borrowing department had refused to repatriate the petitioner to his parent organization when a request to that effect was made by the Corporation in which the petitioner was an employee. Even after completion of the period of deputation, he was not released, instead the Government went on utilizing his service. Thus the refusal of the State Government as a borrowing organization to release the petitioner from service even after the Corporation in which the petitioner was holding a lien had requested for his repatriation, was one of the main features of the case and which persuaded the High Court to hold that under such circumstances the Government would be estopped from denying absorption to the petitioner in Government service. No such fact emerges in the present group of petitions.

[22] In the office memorandum dated 3rd October 2013, the State Government has tried to streamline the procedure for appointment in Government services on deputation. It decided that the term of such deputation would be maximum up to 3(three) years in the first instance and

extension beyond this period can be granted maximum to 1(one) year where such extension is absolutely necessary in public interest. It is true that these guidelines envisaged a maximum period of deputation. However, these are merely internal guidelines and do not vest any right in favour of a deputationist, to be absorbed in the Government service after completion of maximum period of deputation envisaged in the said office memorandum.

[23] Further, as noted in many of these cases, the petitioners had not only served through the entire period of deputation but were also repatriated shortly before their retirements. They retired on superannuation from their parent organizations upon which they were also paid their post-retiral benefits such as gratuity and payable pension. The petitions were filed after retirement, in some cases, after several years.

[24] Considering all such aspects of the matter, I do not find that the petitioners have made out any case for granting the reliefs, as prayed for. All the petitions are, therefore, dismissed. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ