

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

**W.P.(C) No.602 of 2016,
W.P.(C) No.603 of 2016,
W.P.(C) No.604 of 2016,
W.P.(C) No.605 of 2016,
W.P.(C) No.606 of 2016,
W.P.(C) No.607 of 2016,
W.P.(C) No.608 of 2016,
W.P.(C) No.609 of 2016,
W.P.(C) No.610 of 2016,
W.P.(C) No.611 of 2016,
W.P.(C) No.612 of 2016,
W.P.(C) No.613 of 2016,
W.P.(C) No.614 of 2016,**

In W.P.(C) No.602 of 2016

Petitioner:

Sri Haridhan Das,
son of late Srinath Das,
resident of Adarshapally, Milanchakra,
P.O. A.D. Nagar, Agartala

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

- 1. The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura
- 2. The Secretary to the Government of
Tripura,**
General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura
- 3. The Principal Secretary to the Government
of Tripura,**
Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.603 of 2016**Petitioner:**

Sri Pranay Kumar Das,
son of late Dhirendra Chandra Das,
resident of Durgachoumohani East,
Sarat Sarani, Krishnanagar, Agartala,
Pin : 799001

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

- 1. The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura
- 2. The Secretary to the Government of
Tripura,**
General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura
- 3. The Principal Secretary to the Government
of Tripura,**
Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.604 of 2016**Petitioner:**

Sri Khokan Chandra Das,
son of late Nishi Kanta Das,
resident of UBI Bldg. (1st Floor),
Badharghat, P.O. ONGC, Agartala

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

- 1. The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura
- 2. The Secretary to the Government of Tripura,**
General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura
- 3. The Principal Secretary to the Government of Tripura,**
Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.605 of 2016**Petitioner:**

Sri Shyamal Kumar Das,
son of Thakur Chand Das,
care of Amrita Kutir, Old College Road,
Shibnagar, P.O. Agartala College,
Agartala

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

- 1. The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura
- 2. The Secretary to the Government of
Tripura,**
General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura
- 3. The Principal Secretary to the Government
of Tripura,**
Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.606 of 2016**Petitioner:**

Sri Chandra Sekhar Das,
son of late Satish Chandra Das,
resident of Jogendra Nagar,
Vidyasagar Road, P.O. Jogendra
Nagar, Agartala

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

W.P.(C) No.602 of 2016, W.P.(C) No.603 of 2016, W.P.(C) No.604 of 2016, W.P.(C) No.605 of 2016, W.P.(C) No.606 of 2016,
W.P.(C) No.607 of 2016, W.P.(C) No.608 of 2016, W.P.(C) No.609 of 2016, W.P.(C) No.610 of 2016, W.P.(C) No.611 of 2016,
W.P.(C) No.612 of 2016, W.P.(C) No.613 of 2016, W.P.(C) No.614 of 2016

Respondents :

1. **The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura
2. **The Secretary to the Government of
Tripura,**
General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura
3. **The Principal Secretary to the Government
of Tripura,**
Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.607 of 2016**Petitioner:**

Sri Anup Kumar Das,
Son of late Bidhu Bhusan Das,
Resident of East Dhaleswar Road No.
16, P.O. Dhaleswar, Agartala- 799007,
West Tripura

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

1. **The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura

2. The Secretary to the Government of Tripura,

General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

3. The Principal Secretary to the Government of Tripura,

Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.608 of 2016

Petitioner:

Sri Naresh Das,

son of late Prabhas Chandra Das,
resident of Bhatta Pukur, Banik Para,
P.O. A.D. Nagar, Agartala

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

1. The State of Tripura,

represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura

2. The Secretary to the Government of Tripura,

General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

3. The Principal Secretary to the Government of Tripura,

Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.609 of 2016

Petitioner:

Sri Jagadis Das,
son of late Makhan Lal Das,
resident of Ramnagar Road-3,
P.O. Ramnagar, Agartala-799002

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

- 1. The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura
- 2. The Secretary to the Government of Tripura,**
General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura
- 3. The Principal Secretary to the Government of Tripura,**
Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.610 of 2016**Petitioner:**

Sri Manas Kumar Das,
son of late Manindra Ch. Das,
resident of Ramnagar Road-1, (3rd
Cross), P.O. Ramnagar, Agartala-
799002

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

- 1. The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura
- 2. The Secretary to the Government of
Tripura,**
General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura
- 3. The Principal Secretary to the Government
of Tripura,**
Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.611 of 2016**Petitioner:**

Sri Subhash Das,
son of late Debendra Kumar Das,
resident of Ramnagar Road-4,
(Near Sporting Club), P.O. Ramnagar,

W.P.(C) No.602 of 2016, W.P.(C) No.603 of 2016, W.P.(C) No.604 of 2016, W.P.(C) No.605 of 2016, W.P.(C) No.606 of 2016,
W.P.(C) No.607 of 2016, W.P.(C) No.608 of 2016, W.P.(C) No.609 of 2016, W.P.(C) No.610 of 2016, W.P.(C) No.611 of 2016,
W.P.(C) No.612 of 2016, W.P.(C) No.613 of 2016, W.P.(C) No.614 of 2016

Agartala-799002

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

- 1. The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura
- 2. The Secretary to the Government of Tripura,**
General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura
- 3. The Principal Secretary to the Government of Tripura,**
Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.612 of 2016

Petitioner:

Sri Prabhash Mallik,
son of late Sashi Bhushan Malakar,
resident of Ramnagar Road No. 4,
(near the house of Dr. P.K. Datta),
P.O. Ramnagar,
District : West Tripura

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

1. **The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura
2. **The Secretary to the Government of
Tripura,**
General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura
3. **The Principal Secretary to the Government
of Tripura,**
Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.613 of 2016

Petitioner:

Sri Dhanu Majumder,
son of late Debendra Kumar
Majumder, resident of Chanban,
Udaipur, District : Gomati, Tripura

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

1. **The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,

Agartala, West Tripura

2. **The Secretary to the Government of Tripura,**
General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

3. **The Principal Secretary to the Government of Tripura,**
Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In W.P.(C) No.614 of 2016

Petitioner:

Sri Khokan Debbarma,
son of late Tanu Kumar Debbarma,
resident of Colonel Bari,
Agartala-799001

By Advocate :

Mr. D.K. Biswas, Advocate

- V e r s u s -

Respondents :

1. **The State of Tripura,**
represented by the Principal Secretary
to the Government of Tripura,
Public Works Department, New
Secretariat, P.O. New Capital Complex,
Agartala, West Tripura

2. **The Secretary to the Government of Tripura,**
General Administration (P&T)
Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

3. The Principal Secretary to the Government of Tripura,
Finance Department, New Secretariat,
P.O. New Capital Complex, Agartala,
West Tripura

By Advocate :

Mr. N. Majumder, Advocate

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

Date of delivery of Judgment & Order : **29.11.2016**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (Oral)

All these writ petitions, being WP(C) No. 602 of 2016 [Haridhan Das versus State of Tripura & Others], WP(C) No. 603 of 2016 [Pranay Kumar Das versus State of Tripura & Others], WP(C) No. 604 of 2016 [Khokan Chandra Das versus State of Tripura & Others], WP(C) No. 605 of 2016 [Shymal Kumar Das versus State of Tripura & Others], WP(C) No. 606 of 2016 [Chandra Sekhar Das versus State of Tripura & Others], WP(C) No. 607 of 2016 [Anup Kumar Das versus State of Tripura & Others], WP(C) No. 608 of 2016 [Naresh Das versus State of Tripura & Others], WP(C) No. 609 of 2016 [Jagadis Das versus State of Tripura & Others], WP(C) No. 610 of 2016 [Manas Kumar Das versus State of Tripura & Others], WP(C) No. 611 of 2016

W.P.(C) No.602 of 2016, W.P.(C) No.603 of 2016, W.P.(C) No.604 of 2016, W.P.(C) No.605 of 2016, W.P.(C) No.606 of 2016, W.P.(C) No.607 of 2016, W.P.(C) No.608 of 2016, W.P.(C) No.609 of 2016, W.P.(C) No.610 of 2016, W.P.(C) No.611 of 2016, W.P.(C) No.612 of 2016, W.P.(C) No.613 of 2016, W.P.(C) No.614 of 2016

[Subhash Das versus State of Tripura & Others], WP(C) No. 612 of 2016 [Prabhash Mallik versus State of Tripura & Others], WP(C) No. 613 of 2016 [Dhanu Majumder versus State of Tripura & Others] and WP(C) No. 614 of 2016 [Khokan Debbarma versus State of Tripura & Others] are clustered for disposal by a common judgment as the petitioners in this batch of the writ petitions are all similarly circumstanced and their grievance is covered by a decision of this court in **The State of Tripura and Others versus Tribal Engineers' Society, Tripura and Others** [judgment and order dated 10.08.2015 delivered in W.A. No. 67 of 2014].

2. All the petitioners were admittedly promoted from the post of Junior Engineer to the post of Assistant Engineer (Civil) on ad-hoc basis initially for 6 (six) months by the order dated 29.01.1996 and on expiry of that tenure, all the petitioners were allowed to continue on ad-hoc basis without any break till their regularisation. By the office order No. F.6(35)-PWD(E)/92 dated 14.07.2006, Annexure 1 to the writ petition, they were regularly appointed in the post of Assistant Engineer (Civil), borne in the Grade-IV of Tripura Engineering Service, but with prospective effect.

3. Some of the similarly circumstanced persons and their society, namely Tripura Engineers' Society, Tripura filed the writ petition, being WP(C) No. 301 of 2006. The said writ petition was

W.P.(C) No.602 of 2016, W.P.(C) No.603 of 2016, W.P.(C) No.604 of 2016, W.P.(C) No.605 of 2016, W.P.(C) No.606 of 2016, W.P.(C) No.607 of 2016, W.P.(C) No.608 of 2016, W.P.(C) No.609 of 2016, W.P.(C) No.610 of 2016, W.P.(C) No.611 of 2016, W.P.(C) No.612 of 2016, W.P.(C) No.613 of 2016, W.P.(C) No.614 of 2016

allowed by the judgment and order dated 31.03.2014. In that case also, the Assistant Engineers who were appointed on promotion on ad-hoc basis were regularised by the same order dated 14.07.2006, Annexure 1 to the writ petition. The petitioners in that writ petition prayed for treating their promotion on regular basis in the post of Assistant Engineer borne in the Grade-IV of the Tripura Engineering Service from the date of their promotion on officiating basis. The said judgment and order dated 31.03.2014 was challenged by the state by filing a Writ Appeal being W.A. No. 67 of 2014. By the judgment dated 10.08.2015, Annexure-2 to the writ petition, the said Writ Appeal was dismissed on observing as under :

“[3] In our opinion, this dispute is squarely covered by the judgment of the Apex Court in the Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others, reported in AIR 1990 SC 1607. In that case, the Apex Court dealt with the issue as to whether ad-hoc service rendered by an employee is to be counted while considering his service for all intents and purposes and if so, under what circumstances.

[4] We may refer to sub paras-A & B of Para-44 of the judgment which read as follows:

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.”

W.P.(C) No.602 of 2016, W.P.(C) No.603 of 2016, W.P.(C) No.604 of 2016, W.P.(C) No.605 of 2016, W.P.(C) No.606 of 2016, W.P.(C) No.607 of 2016, W.P.(C) No.608 of 2016, W.P.(C) No.609 of 2016, W.P.(C) No.610 of 2016, W.P.(C) No.611 of 2016, W.P.(C) No.612 of 2016, W.P.(C) No.613 of 2016, W.P.(C) No.614 of 2016

[5] The case of the State is that the writ petitioners were appointed dehors the rules. According to the State, the promotions were made in an ad-hoc fashion without following the rules. Even this situation is covered by sub para-B of Para-44 of the said decision of the Apex Court. According to the learned Advocate General, the case of the State is squarely covered by sub para-A of the said decision especially the corollary thereto since the promotion of the writ petitioners on ad-hoc basis was made dehors the rules. Sub para-A of Para-44 clearly indicates that ad-hoc service is normally not to be counted for any purpose, especially when it is made against the rules. The corollary relied upon by the learned Advocate General only clarifies this issue by saying that where the initial appointment is only ad-hoc and the said appointment is not in accordance with the rules and further that the said appointment is a stop gap arrangement, the officiation in such post cannot be taken into account for considering his seniority.

[6] In our view, the present case does not follow under sub para-A for the following reasons:

(i) The ad-hoc appointment though not made according to the rules continued uninterruptedly for 14 years till the services of the writ petitioners, the respondents herein, were regularized in the year 2006.

(ii) This was not a stop gap arrangement because there can be no stop gap arrangement which continues for 14 long years.

(iii) The explanation given by the State that it could not make regular appointment due to the pendency of the writ petition is a fallacious argument since the writ petition was filed in the year 2004 and there is not a word by the State as to what prevented it from making regular appointment from 1992 till 2004.

Nothing has been placed on the file of this case to show that there was any stay order granted by any Court, whereby the State was prevented from making any regular appointment.

[7] We are clearly of the view that this case is covered by sub para-B of Para-44 of the aforesaid decision of the Apex Court which clearly lays down that even if the initial

appointment is not made in accordance with the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. Therefore, the period of service rendered by the writ petitioners from 1992 till the regularization in 2006 will be counted for all intentional purposes."

4. Thus the writ petitioners in this batch of the writ petitions have approached this court by filing the separate writ petitions as in that judgment dated 10.08.2015, it has been observed that the benefit accruing from that judgment will be limited to the persons who had approached this court and the person who had not approached this court will not be entitled to claim the said benefit without obtaining orders from this court. Hence, the writ petitioners in this batch of writ petitions have filed these writ petitions for having the similar benefit which the persons having been similarly circumstanced have already obtained from this court.

5. The respondents by filing the reply, did not dispute that the petitioners are/were the similarly circumstanced that of the Assistant Engineers who approached this court by filing the writ petitions being WP(C) No. 301 of 2006, out of which W.A. No. 67 of 2014 arose. The respondents have raised objections contending that the **Direct Recruit Class-II Engineering Officers' Association and Others versus State of Maharashtra and Others**, reported in **AIR 1990 SC 1607** based on which the judgment and order dated 10.08.2015,

W.P.(C) No.602 of 2016, W.P.(C) No.603 of 2016, W.P.(C) No.604 of 2016, W.P.(C) No.605 of 2016, W.P.(C) No.606 of 2016, W.P.(C) No.607 of 2016, W.P.(C) No.608 of 2016, W.P.(C) No.609 of 2016, W.P.(C) No.610 of 2016, W.P.(C) No.611 of 2016, W.P.(C) No.612 of 2016, W.P.(C) No.613 of 2016, W.P.(C) No.614 of 2016

Annexure 2 to the writ petition has been passed, has clearly laid down that if the initial appointment is not made in accordance with the rules, but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. Notwithstanding that since that judgment is related to the direct recruitment, that principle cannot be applied to the promotee. As astounding as be it may, it was the submission from the state.

6. This court is unable to accept such analogy which is grossly against the legal principle as curved out in Direct Recruit Class-II Engineering Officers' Association (*supra*) by the apex court.

7. Having scrutinised the records, this court finds that all the writ petitions are covered by the judgment dated 10.08.2015, delivered in WA No. 67 of 2014 [The State of Tripura and Others versus Tribal Engineers' Society, Tripura and Others], Annexure-2 to the writ petition. Therefore, all the writ petitioners are entitled to receive similar benefit as has been extended by this court to the writ petitioners in WP(C) No. 301 of 2006. Thus the respondents are directed to count the officiating service of the petitioners with their service in the regular establishment, meaning that the period of service rendered by the writ petitioners since their appointment on ad-hoc basis till regularisation by the office order dated 14.07.2006, Annexure-1 to the writ petition, shall be treated as part of their regular service for all purposes, as

W.P.(C) No.602 of 2016, W.P.(C) No.603 of 2016, W.P.(C) No.604 of 2016, W.P.(C) No.605 of 2016, W.P.(C) No.606 of 2016, W.P.(C) No.607 of 2016, W.P.(C) No.608 of 2016, W.P.(C) No.609 of 2016, W.P.(C) No.610 of 2016, W.P.(C) No.611 of 2016, W.P.(C) No.612 of 2016, W.P.(C) No.613 of 2016, W.P.(C) No.614 of 2016

the petitioners have occupied the post of Assistant Engineer (Civil) on officiating basis uninterruptedly till they were appointed on regular basis in the post of Assistant Engineer (Civil) borne in the Grade-IV of the Tripura Engineering Service by the order dated 14.07.2006, Annexure-1 to the writ petition.

8. Having held thus, these writ petitions are allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

Sabyasachi. B