

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.55/2023

Sri Sankarsan Majumder, S/O. Late Sukesh Bandhu Majumder, Resident of Vill.-Chinaihani, Baburbazar, P.O.-Agartala Airport, P.S.-Airport, District-West Tripura, PIN-799009.

.....Appellant(s).

V E R S U S

1. The State of Tripura, Represented by the Principal Secretary, Information Technology, Government of Tripura, New Secretariat Building, P.O. & P.S.-New Capital Complex, Agartala, West Tripura.

2. The State of Tripura, Represented by the Secretary to the Government of Tripura, Finance Department, Agartala.

3. The Director, Department of Information Technology, I.T. Bhaban, ITI Road, Indranagar, P.O.-Kunjaban, PIN-799006.

.....Respondent(s).

For Appellant(s) : Mr. B. Banerjee, Advocate,
Ms. R. Majumder, Advocate.

For Respondent(s) : Mr. K. De, Addl. G.A.

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

Date of hearing and judgment: **19th December, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. B. Banerjee, learned counsel appearing for the petitioner/appellant and Mr. K. De, learned Addl. Government Advocate appearing for the respondents-State.

2. The writ petition was preferred seeking issuance of writ of certiorari directing the respondents and each of them to set aside, quash and cancel the order dated 07.05.2005 and the order dated 13.04.2006 forthwith. Petitioner also prayed for a mandamus upon the respondents to restore the regular pay scale of Rs.3300-7100/- for the period w.e.f. 02.02.2005 to

01.02.2011 with all financial and service benefits. The relevant details of the petitioner's service career as pleaded by him have been taken note of by the learned Writ Court at paragraph-3 which is reproduced hereunder:

"3. Briefly stated, the petitioner was first appointed to the post of Lower Division Clerk(LDC) under the respondents on contract basis for 2(two) years with certain conditions vide order dated 24th January, 2001(Annexure-1 to the writ petition). Thereafter, the Director, Information Technology, Govt. of Tripura issued an order dated 23rd/24th December, 2002 providing him pay scale of Rs.3,300-7,100/- prescribed for regularly/permanently appointed LDCs and extended his contract service period for further 2(two) years from the date of completion of 2(two) years of service. Vide order dated 7th May, 2005, the service of the petitioner on contract basis was again extended for a further period of 1(one) year w.e.f 2nd February, 2005. Thereafter, under an order dated 13th April, 2006 issued by Director, Information Technology, Govt. of Tripura, the petitioner was again appointed to the post of LDC on fixed pay of Rs.2,345/- only per month w.e.f 2nd February, 2006 on certain terms and conditions. On completion of 5(five) years of service on fixed pay basis, the Director, Information Technology, Govt. of Tripura regularized his service and provided him regular scale of pay of PB-2 Rs.5,310-24,000/- with Grade Pay Rs.1,800/- along with other allowances as admissible under rules with effect from 02.02.2011 with D.N.I. 01.07.2012."

3. The controversy is whether the petitioner could rightfully seek quashing of the order dated 07.05.2005 by which his engagement on contract basis was further extended for a period of one year w.e.f. 02.02.2005 and whether his appointment on the post of Lower Division Clerk (LDC) on fixed pay per month w.e.f. 02.02.2006 as per order dated 13.04.2006 issued by the Director, Information Technology, Government of Tripura are susceptible to challenge and that too, at such a belated stage in the year 2022.

4. Mr. B. Banerjee, learned counsel for the writ petitioner/appellant, submits that the learned Writ Court has committed a serious error in failing to appreciate that the injury caused on account of the impugned orders are amounting to continuing wrong and can be remedied at any length of time. He has, in particular, relied upon the ratio rendered by the Apex Court in the case

of *Union of India and others versus Tarsem Singh* reported in (2008) 8 SCC

648 at paragraph-7 which is extracted hereunder:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.."

5. According to the opinion of the Writ Court, petitioner's status as a contractual employee though on a scale of pay which was admissible to regular employees was concluded after two extensions by appointing him as an LDC on fixed pay of Rs.2,345/- only w.e.f. 02.02.2006 on terms and conditions which the petitioner dutifully accepted. As per the Government policy, employees initially engaged on fixed pay can be regularized only upon completion of 5(five) years of service which in the case of the present petitioner was done w.e.f. 02.02.2011. The appointment of the petitioner on fixed pay on the post of LDC contained certain terms and conditions, such as (i) the appointment was purely on temporary basis and would not confer any title to permanent employment; (ii) petitioner would be under probation for a period of two years and his appointment could be terminated without assigning any

reasons. These terms and conditions were accepted by the petitioner by submitting his joining to the post of LDC on fixed pay basis. Even after being regularized w.e.f. 02.02.2011 he chose to acquiesce to the fresh appointment and approached this Writ Court only in the year 2022. The explanation is that he was making representations. He had also been referred to the Lok Adalat where the issue remained undecided. Therefore, the cause of action did not become stale. Therefore, according to the petitioner, the impugned judgment be set aside and his status as a permanent employee be restored from the date on which he was granted regular scale of pay on 23.12.2002 though he was undisputedly serving in a contractual capacity at that point of time.

6. Mr. K. De, learned Addl. Government Advocate appearing for the respondents-State, has supported the findings and the reasonings rendered by the learned Writ Court.

7. We have considered the submission of learned counsel for the parties in the limited gamut of facts borne from the records and duly taken note of in the impugned order also. It is beyond cavil that a scale of pay granted during a contractual period of engagement to the petitioner would not clothe him to the status of a regular employee. Be that as it may, petitioner's status from a contractual employee was changed to an employee appointed on the post of LDC on fixed pay w.e.f. 02.02.2006 with certain terms and conditions which the petitioner accepted without any demur. The Government policy permitted regularization of an employee on fixed pay only after five years which the petitioner was conferred with w.e.f. 02.02.2011 which again he duly accepted. It is not a case of continuing wrong which issue has been dealt with

by the learned Single Judge in eloquent terms at paragraphs-14 to 21. The decision in the case of **Tarsem Singh** (supra) being relied upon by the petitioner does not fit into the petitioner's case. The present case does not project a case of wrong scale of pay granted to the petitioner at some point of time in his career which has continued to have a cascading effect thereafter which is sought to be remedied by invoking writ jurisdiction, of course at a belated stage. The cause of action, if any, arose on the change of status of the petitioner from a contractual employee on a regular pay scale to an LDC on fixed pay in the year 2006 and again when he was regularized w.e.f. 02.2.2011. The reasonings recorded by the learned Single Judge, therefore, do not appear to be suffering from any error of law or on facts requiring interference at the appellate stage.

8. The instant appeal being devoid of merit is accordingly dismissed.
Pending application(s), if any, also stands disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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