

**HIGH COURT OF TRIPURA
AGARTALA**

WA. No.102 of 2020

Connected with

**WA. No.103 of 2020 WA. No.104 of 2020 WA. No.105 of 2020 WA.
No.106 of 2020 WA. No.107 of 2020 WA. No.108 of 2020 WA. No.109
of 2020 WA. No.110 of 2020 WA. No.111 of 2020 WA. No.112 of 2020
WA. No.113 of 2020 WA. No.114 of 2020 WA. No.115 of 2020 WA.
No.116 of 2020 WA. No.117 of 2020 WA. No.118 of 2020 WA. No.119
of 2020 WA. No.120 of 2020 WA. No.121 of 2020 WA. No.122 of 2020
& WA. No.123 of 2020**

In W.A.No.102 of 2020

Sanjoy Kumar Paul

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.103 of 2020

Smt. Sudipta Nath

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.104 of 2020

Shipra Malakar

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.105 of 2020

Sri Madan Deb

.....Appellant(s)

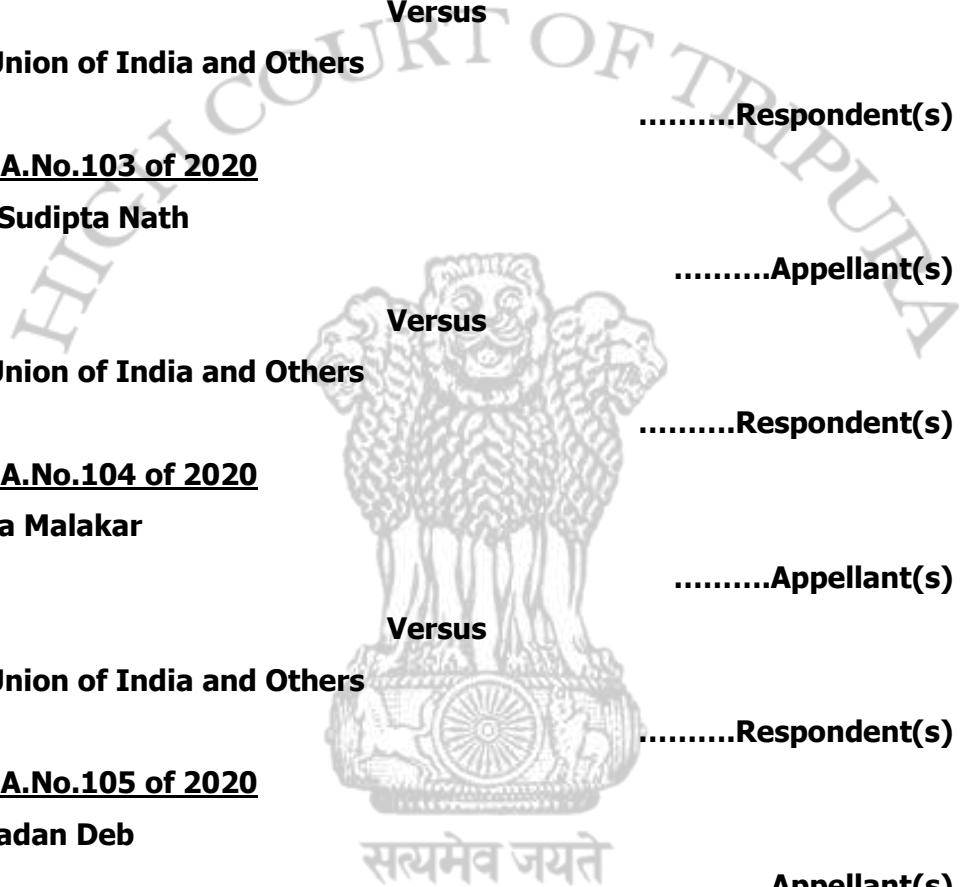
Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.106 of 2020

Sri Rahim Debbarma



.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.107 of 2020

Maman Singha Roy

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.108 of 2020

Arjun Shil

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.109 of 2020

Pradip Lodh

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.110 of 2020

Sri Subrata Sarkar

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.111 of 2020

Sri Debajit Chakraborty

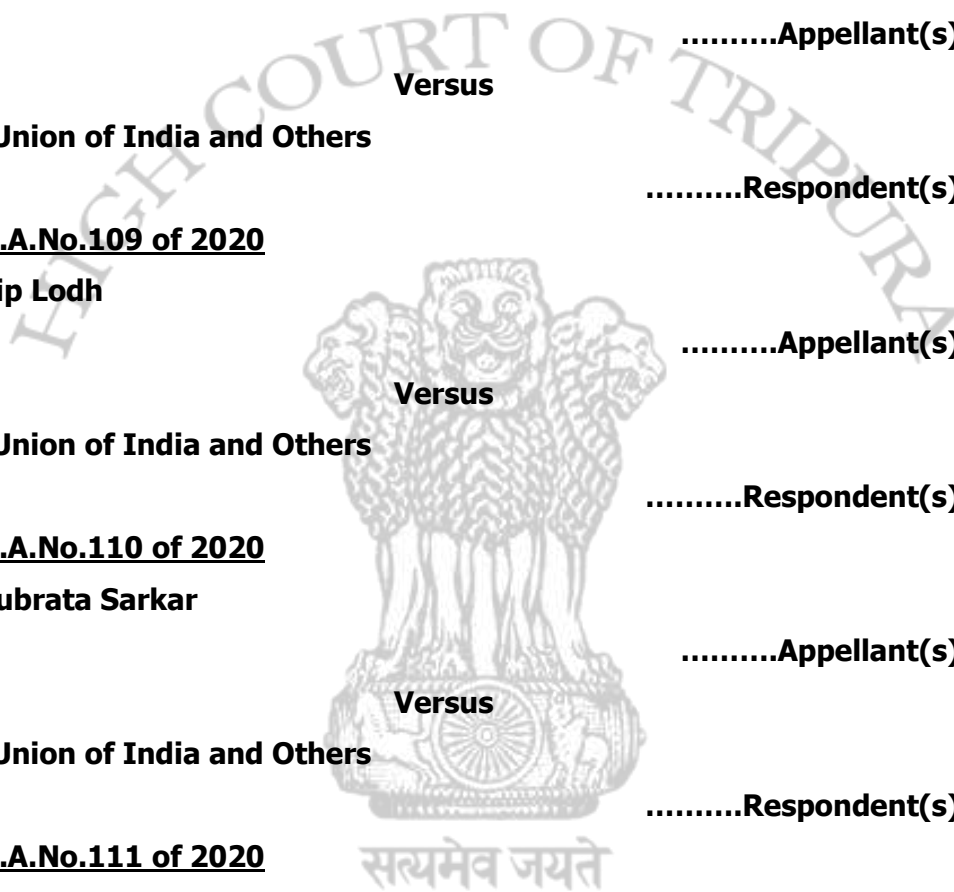
.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.112 of 2020



Gopal Debnath

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.113 of 2020

Alok Saha

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.114 of 2020

Pranab Majumder

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.115 of 2020

Sri Sudhansu Pal

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.116 of 2020

Nirmal Chandra Saha

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.117 of 2020

Dasarath Reang

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)



In W.A.No.118 of 2020

Benu Kumar Debbarma

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.119 of 2020

Pramod Lal Das

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.120 of 2020

Tapan Debnath

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.121 of 2020

Sri Debasish Sengupta

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

In W.A.No.122 of 2020

Sri Achalmani Biswas

.....Appellant(s)

Versus

The Union of India and Others

.....Respondent(s)

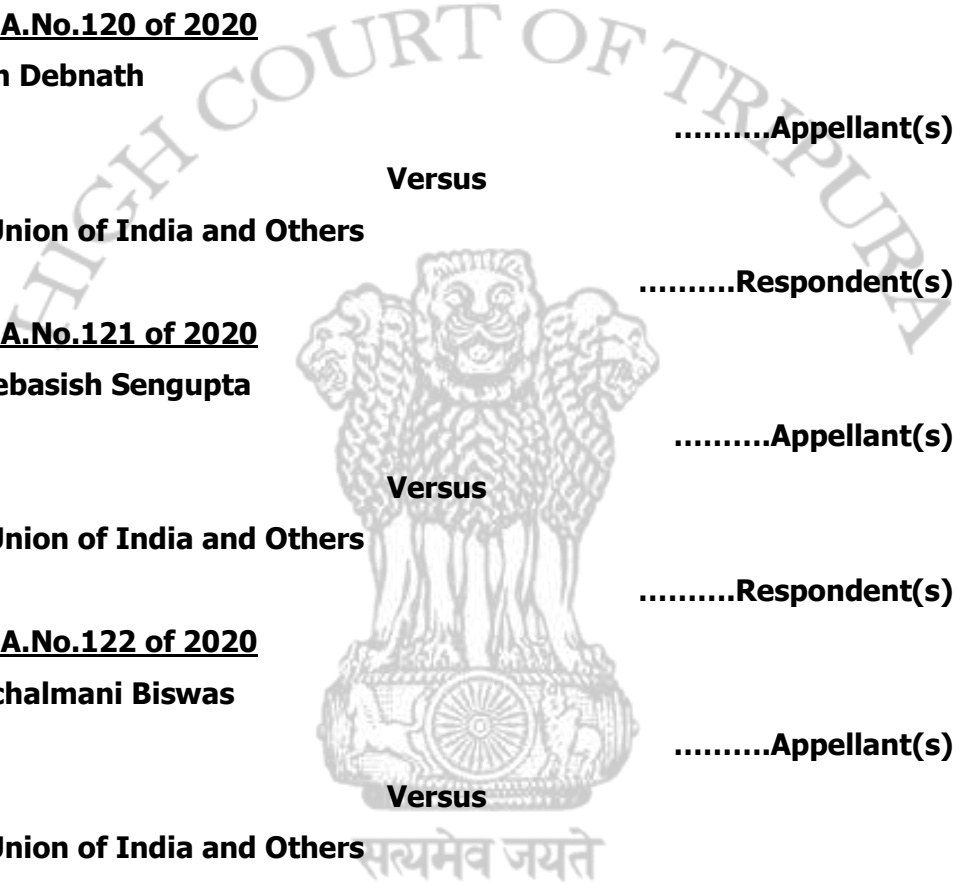
In W.A.No.123 of 2020

Sri Sashi Mohan Debbarma

.....Appellant(s)

Versus

The Union of India and Others



.....Respondent(s)

For Appellant(s)	:	Mr. Sankar Deb, Sr. Adv. Mr. P.K. Pal, Adv. Mr. S. Baidhya, Adv.
For Respondent(s)	:	Mr. Biswanath Majumder, CGC. Mr. P.K. Debnath, Adv.
Date of Hearing of Judgment & Order	:	12.01.2023
Whether fit for reporting	:	YES/NO

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment & Order

[Chief Justice(Acting)]

Heard Mr. Sankar Deb, learned senior counsel appearing for the appellant as well as Mr. Biswanath Majumder, learned CGC appearing for the respondents No.1 and 2 and Mr. P.K. Debnath, learned counsel appearing for the respondent No.3.

2. All these writ petitions being W.A. No.103 of 2020, W.A. No.104 of 2020, W.A. No.105 of 2020, W.A. No.106 of 2020, W.A. No.107 of 2020, W.A. No.108 of 2020, W.A. No.109 of 2020, W.A. No.110 of 2020, W.A. No.111 of 2020, W.A. No.112 of 2020, W.A. No.113 of 2020, W.A. No.114 of 2020, W.A. No.115 of 2020, W.A. No.116 of 2020, W.A. No.117 of 2020, W.A. No.118 of 2020, W.A. No.119 of 2020, W.A. No.120 of 2020, W.A. No.121 of 2020, W.A. No.122 of 2020 & W.A. No.123 of 2020 are combined for disposal by a common judgment and order inasmuch as the basic facts in the present writ appeals are identical in nature.

3. The fact of the case is that the appellant entered into service as clerical status on 02.09.1991 under the Managing Director Tripura Scheduled Castes and Tripura Scheduled Tribes Co-operative Development Corporation Limited covered by the Employees' Provident Fund and Misc. Provisions Act, 1952 (hereinafter referred to as the EPF Act). The EPF enrolment number of the appellant is NE/AGT/2202/19 under the EPF & Misc. Provision Act, 1952. The appellant was also inducted to the EPF Pension Scheme, 1995 under the same enrolment EPF number.

4. The EPF was to be constituted by depositing an Employees' Share @ 12% of the Basic wages including Dearness Allowances. The Employer also to contribute an identical amount which together would constitute Provident Fund. The corpus of the pension fund was to be constituted by transferring 8.33% out of Employer's Contribution under Section 6 of the Act on the basis of maximum pensionable amount of Rs.6,500/- per month which had enhanced upto Rs.15,000/- per month vide Amendment of Notification No.GSR 609(E) dated 22.08.2014 came into effect on 01.09.2014.

5. Under the said amendment, there is a provision that the employees contribution towards the Pension Scheme beyond Rs.15,000/- shall be on the basis of actual pay drawn by filing joint option (Employees and Employers) within the cutoff date. Subsequently, the Hon'ble Kerala High Court set aside the notification No.GSR 609(E) dated 22.08.2014 vide judgment and order dated 12.10.2018 observing that there should not be a cut off date and at any time joint option can be exercised and the employee under EPS will be entitled to get their pension on the basis of their actual last pay drawn and the

Hon'ble Supreme Court also upheld the said judgment and order of Kerala High Court vide judgment and order dated in SLP (Civil)Diary No.9610 of 2019.

Being similarly situated, the appellant preferred the writ petition before this Hon'ble High Court and after hearing, the learned Single Judge vide judgment and order dated 28.02.2020 dismissed the writ petition. Being aggrieved and dissatisfied with the judgment and order dated 28.02.2020, the appellant has preferred this writ appeal.

6. Mr. Sankar Deb, learned senior counsel appearing for the appellant has submitted that the employer to contribute an identical amount which together would constitute Provident Fund. The corpus of the pension fund was to be constituted by transferring 8.33% out of Employer's Contribution under Section 6 of the Act on the basis of maximum pensionable amount of Rs.6,500/- per month which had enhanced upto Rs.15,000/- per month vide Amendment of Notification No.GSR 609(E) dated 22.08.2014 came into effect on 01.09.2014. Under the said amendment, there is a provision that the employees contribution towards the Pension Scheme beyond Rs.15,000/- shall be on the basis of actual pay drawn by filing joint option (Employees and Employers) within the cutoff date. Subsequently, the Hon'ble Kerala High Court set aside the notification No.GSR 609(E) dated 22.08.2014 vide judgment and order dated 12.10.2018 observing that there should not be a cut off date and at any time joint option can be exercised and the employee under EPS will be entitled to get their pension on the basis of their actual last pay drawn and the Hon'ble Supreme Court also upheld the said judgment and order of Kerala High Court vide judgment and order dated in SLP (Civil)Diary No.9610 of 2019.

7. During the course of his submission, Mr. Deb, learned senior counsel has referred the judgment of the Hon'ble Supreme Court dated 04.11.2022 arising out of Special Leave Petition(C)Nos.8658-8659 of 2019. He has referred to paras-23, 35 and 44 which reads as under :

"23. The first point on which argument has been made on behalf of the appellants before us is that the aforesaid amendment had been made in exercise of power under Section 7 of the 1952 Act read with entry 10 of the III Schedule of the Act. Thus, the legislative authorization is there for modification of a scheme whether prospectively or retrospectively. Moreover, our attention has been drawn to paragraph 32 of the 1995 scheme, which stipulates :

"32. Valuation of the Employees' Pension Fund and review of the rates of contributions and quantum of the pension and other benefits.-

The Central Government shall have an annual valuation of the Employees' Pension Fund made by a Valuer appointed by it:

Provided that it shall be open to the Central Government to direct a valuation to be made at such other times as it may consider necessary.

At any time, when the Employees' Pension Fund so permits, the Central Government may alter the rate of contributions payable under this Scheme or the scale of any benefit admissible under this Scheme or the period for which such benefit may be given."

Entry 10 of the III Schedule to the Act, which refers to matters for which provision may be made in the pension scheme, provides:

"10. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees."

35. The requirement in the scheme for employee's contribution to the extent of 1.16 per cent for option members, in our opinion, is illegal. There is nothing in the 1952 Act which requires payment to the pension fund by an employee. Section 6A of the Act also does not have any such stipulation. Since the Act does not contemplate any contribution to be made by an employee to remain in the scheme, the Central Government under the scheme itself cannot mandate such a stipulation. What is to be considered here is that for the mandatory members, the Central Government continues to contribute the requisite 1.16 per cent of their salary. For option members, additional contribution by them is contemplated in order to remain in the scheme. In such a situation, in our opinion, a legislative amendment of the Act would have been necessary, providing for contribution to be made by an employee. To that extent, the provision of the scheme requiring contribution by an

individual employee is ultra vires the parent act. At the same time, we cannot ignore the fact that the pension amount to be paid has been calculated on projections that the corpus would include the option employees' additional contribution of 1.16 per cent. We also cannot mandate the Central Government to contribute to a pension scheme, in absence of a legislative provision to that effect. It would be for the administrators to readjust the contribution pattern within the scope of the statute and one possible solution could be to raise the level of the employer's contribution in the scheme. We shall, however, suspend the operation of this part of our judgment for a period of six months so that the legislature may consider the necessity of bringing appropriate legislative amendment on this count. For the aforesaid period, the scheme as it stands shall continue. Till such time, if no such legislative exercise is undertaken, the duty to contribute 1.16 per cent of the salary shall apply on option members as well. This contribution shall be adjusted depending on any amendment that may be brought. For the period of six months, however, the opting employees shall make payment of 1.16 per cent contribution as stop gap measure. In the event no amendment to the statute or the scheme is made within such extended time, then the administrators of the fund will have to operate the pension fund for the option members from out of the existing corpus.

44. We accordingly hold and direct:

(i) The provisions contained in the notification no. G.S.R. 609(E) dated 22nd August 2014 are legal and valid. So far as present members of the fund are concerned, we have read down certain provisions of the scheme as applicable in their cases and we shall give our findings and directions on these provisions in the subsequent subparagraphs.

(ii) Amendment to the pension scheme brought about by the notification no. G.S.R. 609(E) dated 22nd August 2014 shall apply to the employees of the exempted establishments in the same manner as the employees of the regular establishments. Transfer of funds from the exempted establishments shall be in the manner as we have already directed.

(iii) The employees who had exercised option under the proviso to paragraph 11(3) of the 1995 scheme and continued to be in service as on 1st September 2014, will be guided by the amended provisions of paragraph 11(4) of the pension scheme.

(iv) The members of the scheme, who did not exercise option, as contemplated in the proviso to paragraph 11(3) of the pension scheme (as it was before the 2014 Amendment) would be entitled to exercise option under paragraph 11(4) of the post amendment scheme. Their right to exercise option before 1st September 2014 stands crystalised in the judgment of this Court in the case of R.C. Gupta (supra). The scheme as it stood before 1st September 2014 did not provide for any cut off date and thus those members shall be entitled to exercise option in terms of paragraph 11(4) of the scheme, as it stands at present. Their exercise of option shall be in the nature of joint options covering 47 | Page preamended paragraph

11(3) as also the amended paragraph 11(4) of the pension scheme.

There was uncertainty as regards validity of the post amendment scheme, which was quashed by the aforesaid judgments of the three High Courts. Thus, all the employees who did not exercise option but were entitled to do so but could not due to the interpretation on cutoff date by the authorities, ought to be given a further chance to exercise their option. Time to exercise option under paragraph 11(4) of the scheme, under these circumstances, shall stand extended by a further period of four months. We are giving this direction in exercise of our jurisdiction under Article 142 of the Constitution of India.

Rest of the requirements as per the amended provision shall be complied with.

(v) The employees who had retired prior to 1st September 2014 without exercising any option under paragraph 11(3) of the pre-amendment scheme have already exited from the membership thereof. They would not be entitled to the benefit of this judgment.

(vi) The employees who have retired before 1st September 2014 upon exercising option under paragraph 11(3) of the 1995 scheme shall be covered by the provisions of the paragraph 11(3) of the pension scheme as it stood prior to the amendment of 2014.

(vii) The requirement of the members to contribute at the rate of 1.16 per cent of their salary to the extent such salary exceeds Rs.15000/ per month as an additional contribution under the amended scheme is held to be ultra vires the provisions of the 1952 Act. But for the reasons already explained above, we suspend operation of this part of our order for a period of six months. We do so to enable the authorities to make adjustments in the scheme so that the additional contribution can be generated from some other legitimate source within the scope of the Act, which could include enhancing the rate of contribution of the employers. We are not speculating on what steps the authorities will take as it would be for the legislature or the framers of the scheme to make necessary amendment. For the aforesaid period of six months or till such time any amendment is made, whichever is earlier, the employees' contribution shall be as stop gap measure.

The said sum shall be adjustable on the basis of alteration to the scheme that may be made.

(viii) We do not find any flaw in altering the basis for computation of pensionable salary.

(ix) We agree with the view taken by the Division Bench in the case of R.C. Gupta (supra) so far as interpretation of the proviso to paragraph 11(3) (pre-amendment) pension scheme is concerned. The fund authorities shall implement the directives contained in the said judgment within a period of eight weeks, subject to our directions contained earlier in this paragraph.

(x) The Contempt Petition (C) Nos.19171918 of 2018 and Contempt Petition (C) Nos. 619620 of 2019 in Civil Appeal Nos. 1001310014 of 2016 are disposed of in the above terms."

8. Having heard the counsel this court has come to a conclusion that both sides have placed on record the judgment passed by the apex Court dated 04.11.2022 arising out of Special Leave Petition(C)Nos.8658-8659 of 2019 with regard to subject matter which is subjudice before the apex Court where the present writ appeals are connected. The Hon'ble Supreme Court by order dated 04.11.2022 has disposed of the appeals by suspending the Employees' Pension (Amendment) Scheme, 2014 for a period of six months as indicated in para 23 which is reproduced hereinabove. Further the Hon'ble Supreme Court has also stipulated certain guidelines to be followed under Para-44 which has also been reproduced hereinabove.

9. In view of the same, the present writ appeals are accordingly disposed of. However, liberty is given to the effected parties in the event if they are aggrieved by any further proceedings, they are at liberty to avail remedies under law.

Accordingly, writ appeals are allowed and disposed of.

JUDGE

CHIEF JUSTICE (ACTING)



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