

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A

WA. No.15 of 2022

Smti. Bithi Chakraborty

.....Appellant

-V-E-R-S-U-S-

The State of Tripura & Others

.....Respondents

For Appellant(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A.
Date of hearing and Judgment and order	:	06.02.2024
Legal Reporting	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

F_I_N_A_L_O_R_D_E_R

[T. Amarnath Goud, J]

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the appellant also heard Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents.

[2] The present appeal has been filed under Article-226 of the Constitution of India read with Chapter-VA Rule-2(2) of the Gauhati High Court Rules as applicable against the judgment and order dated 18.11.2021 passed by the learned Single Judge in WP(C) No.616 of 2020.

[3] The facts in brief are that the appellant filed WP(C) No.616 of 2020 before this Court sought for necessary direction upon the respondents to consider 50% of service rendered by the appellant w.e.f. 04.01.1991 till her regularization in the post of Marketing Assistant, w.e.f. 11.10.2007. After attaining the age of superannuation, the appellant retired from service on 31.12.2019. After retirement in the month of February, 2020 the appellant was paid on Rs.2,77,788/- towards payment of her gratuity. In calculating the amount of gratuity which became payable to the appellant the service rendered by the appellant was taken into consideration but the service rendered by the appellant from 04.01.1991 till her regularization of service in the post of marketing Assistant was not taken into

consideration. Through a fair and transparent selection process the appellant has been selected for the post of Instructor under Tripura Cooperative Milk Producers Union Ltd. But, the learned Single Judge by judgment and order dated 18.11.2021 dismissed the WP(C) No.616 of 2020.

[4] Hence, the present appeal has been preferred by the appellant before this Court for redress.

[5] Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the appellant has submitted that the letter and spirit of the memorandums dated 16.08.1978, 26.09.1978 and 25.02.2010 issued by the Finance Department, Govt. of Tripura are applicable to the appellant. Their further contention is that the appellant served under Union Ltd. the entire service rendered by the appellant w.e.f. 01.04.1991 to 30.10.2007 before her regular service cannot be wiped out and ignored as it would be unreasonable and irrational and arbitrary.

[6] It has been further contended that since 01.04.1991 till her retirement on attaining the age of superannuation, w.e.f. 31.12.1991 the appellant served continuously without any break and the appellant was brought into regular establishment by regularizing her service and for this reason at least 50% of service rendered by the appellant should be taken into consideration for determining the amount of gratuity. The Single Judge fell in error in not considering that when temporary service is followed by permanent service, the temporary service should be counted for the purpose of pension and other pensionary benefits.

[7] The learned Single Judge ought to have held that the ratio of the decision of the Hon'ble Supreme Court reported in (2010) 4 SCC 317 and (2019)10 SCC 542, wherein it has been held that when temporary service is followed by regular service in the same establishment without any break the temporary service should be taken into consideration for pensionary benefits.

[8] Mr. Roy Barman, learned senior counsel appearing for the appellant has submitted that by dint of those circulars issued by the Finance Department, Government of Tripura dated 16th August, 1978 and 26th September, 1979, the appellant is eligible for counting half of the period of service rendered as casual

employee for the purpose of calculating the amount of gratuity. Mr. Roy Barman, learned senior counsel has placed his reliance in a decision of the Hon'ble Apex Court in *Prem Singh v. State of Uttar Pradesh and Others*, reported in (2019) 10 SCC 516, wherein it has been held that irrespective of any circulars or memorandums or any policy by any organization, the employees of such organization would be entitled for gratuity for the period he/she served in any capacity under such organization before his/her such regularization under the said organization. Mr. Roy Barman, learned senior counsel has invited our attention to para-33 of the judgment, wherein it has been observed thus:

“33. The question arises whether the imposition of rider that such service to be counted has to be rendered in-between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularization has been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in the Note to Rule 3(8) of the 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularization. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.”

[9] The appellant has sought for direction upon the respondents to re-determine the gratuity which became payable to the appellant after considering 50% of the service rendered by the appellant from 04.01.1991 to 30.07.2007 plus her regular service and to pay the balance amount with interest @9% per annum w.e.f. 01.02.2020 till payment is made. In support of his contention, Mr. Roy Barman, learned senior counsel has relied on the memorandums dated 16.08.1978, 26.09.1978 and 25.02.2010 issued by the Finance Department Govt. of Tripura as by those memorandums it was provided that 50% of past service of contingent workers/DRWS/Casual workers should be added to their regular service for the purpose of pension and other benefits.

[10] Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents has submitted that the memorandums, dated, 16.08.1978, 26.09.1978 and 25.2.2010, issued by the Finance Department, Govt of Tripura relied on by the appellant are applicable for the Govt employees only and not for the employees of the PSU's and Cooperatives. It has been further stated that the Animal Resource Development Department (ARDD) is an administrative department in respect to the Union Ltd. The appellant was regularized on 01.08.2007 and she was given gratuity taking 01.08.2007 as the date of appointment.

[11] It is denied that Tripura Co-operative Milk Producers, Union Ltd. is fully controlled by the government of Tripura and the union is a State under the meaning of Article-12 of the Constitution of India. The Tripura Cooperative Milk Producers is a cooperative society registered under the Tripura Cooperative Societies Act, 1974 dated 02.03.1982. The Animal Resource Development Department (ARDD) is the administrative Department in respect of the Union. As per TCS Act and bye-laws of the Union, the management affairs are vested with the elected Board of Directors of the TCMPUL. The State government only provides grants/share capital to the Union time to time based on the budgeted provision. Besides, on need basis technical support like sending Govt. employees on deputation to the Union is provided by the State government.

[12] In view of above discussion and having gone through the judgment of the learned Single Judge, this Court is of the view that the Union is a Co-operative Society constituted under the Tripura Co-operative Societies Act, 1974 and managed and run by democratically elected Board. as submitted and pleaded, it has come to light that for welfare of the employees, the Gomati Milk Producers, Union Limited entered into an agreement with Life Insurance Corporation of India on 01.01.2002 for Group Gratuity Scheme and accordingly, once in a year, yearly premium of gratuity for covered employees was being deposited from own resources. The appellant was also joined and then covered under this Group Gratuity Scheme from the date of regularization of her service i.e. on and from 01.08.2007. It is further noticed that the Union, being a cooperative society is governed by its own bye-laws. There is no scrap of paper that the Union has ever adopted those memorandums issued by the Finance Department, Government of Tripura.

[13] The Union had never received any grant or aid either from State government or from Central government or from National Dairy Development Board. Learned counsel has further submitted that since the Union is governed by its own bye-laws and there being no relation with the State government regarding funding or other aids, the Union has never adopted the policy made by the Finance Department for the purpose of extending any benefits to its employees which are applicable to the State government employees.

[14] To the present facts and circumstances of the case, we can profitably take the principles laid down by the Full Bench decision in *Sri Konaseema Co-operative Central Bank Ltd. Amalapuram and Another v. Seetharama Raju*, reported in *AIR 1990 AP 171*, wherein, it has been held that if a particular co-operative society can be characterized as a State within the meaning of Article-12 of the Constitution, it would also be an authority within the meaning, and for the purpose of Article-226 of the Constitution. In such a situation, an order passed by a society against its employee can be corrected by way of a writ petition. This is not because they bye laws have the force of law, but on the ground that having framed the bye-laws prescribing the service conditions of its employees, the Society must follow them in the interest of fairness.

[15] The bye-laws made by a co-operative society registered under the Co-operative Societies Act do not have the force of law. They are in the nature of contract, terms of contract, between the society and its employees, or between the society and its members as the case may be. Hence, where a society cannot be characterized as a State the service conditions of its employees, government bye laws, cannot be enforced through a writ petition. Mandamus, certiorari and prohibition are public law remedies. They are not available to enforce private law rights. Every act of a society which may be a State within the meaning Article-12, does not necessarily belong to public law field. A society, which is a State, may have its private law rights just like a government. A contractual obligation, which is not statutory, cannot be enforced by way of a writ petition under Article-226 of the Constitution.

[16] A statutory duty enjoined on a cooperative society can be enforced by a writ of mandamus even if the society is not an authority under Article-12. If a cooperative society is funded by the State in full or substantial measure and the

government control is deep and pervasive, it falls within the ambit of Article-12 of the Constitution and therefore, its actions can be questioned by a writ of certiorari. Since every bye-laws of a cooperative society falling under Article-12 is comprehended by the inclusive definition of law under Article-13(3) (a), it being void to the extent of its inconsistency with the provisions of Part-III of the Constitution. Where a corporation, company or society is held to be a state within the meaning of Article-12, it is governed by Parts-III and IV of the Constitution. Such an entity has to act and operate consistent with, and subject to the limitation contained in these parts. Among other obligations, it has to abide by Article-14, which is held to be antithesis of arbitrariness and which obliges the State to act reasonably in all its dealings.

[17] Now, if a corporation frames certain Rules/Regulations/Bye-laws, governing a disciplinary enquiry and prescribing the procedure which has to be followed while holding such an enquiry, it has to follow them in all cases. It cannot claim any discrimination or choice in the matter of following such Rules. Such a course, if permitted, would be inherently discriminatory. The corporation would follow the rules in one case, but not in the other. It will follow such of the rules as it thinks convenient, but not the others. Compliance with the bye-laws also seems to be necessary in the name of fair-play.

[18] Even if there are any words which do not strictly fit into the established legal position, it would be more reasonable to read them consistent with the well-established legal position than to infer a conflict or to say on that basis that the previous law stands overruled. In the interest of certainty of law and judicial discipline, we ought to construe the several decisions of the Supreme Court as constituting motifs of a harmonious pattern. After all, judgments ought not to be read as statutes; they are authority for what they decide. A word here or a word there, should not be made a basis for inferring inconsistency or conflict of opinion. Law does not develop in a casual manner. It develops by conscious, considered steps.

[19] This Court finds that there is no piece of evidence showing that the Union has ever adopted the policy of the Finance Department, Government of Tripura; rather, by going through the bye-laws of the Union, it has come to light that it has been constituted under the Tripura Co-operative Societies Act, 1974.

The members of the Society are democratically elected time to time. It is governed and run by its own bye-laws. At times administrators are appointed if elections are not held. Under 2.1. of the bye-laws, “Act” means the Tripura State Co-operative Societies Act, 1974. Under 2.2. of the bye-laws, “Board” means the Board of Directors constituted as per provision of these bye-laws. Under 2.8. of the bye-laws, “Rules” means the rules framed under the Tripura State Co-operative Societies Rules, 1976. Under 3.2.12. of the bye-laws, it is stipulated that the Union will settle all matters of common interest relating to its members and to further their interests. Rule 3.2.15. of the bye-laws, stipulates that it will undertake housing schemes for the employees of the Union with or without government aid. Rule 3.2.16. of the bye-laws, says that it will raise fund for the benefit of the employees of the Union and its members and to assist the same.

[20] From the nature of constitution of the “Union”, as stated above, we are in agreement with the submission of learned counsel appearing for the respondents that the Union is governed and run by its own bye-laws, and its activities are circumscribed within the members of the Union. There is nothing to show that the Union had ever received any grant or aid from any external agencies including the State-government. It is surfaced that considering the interest of the members and employees of the Union, the competent authorities of the Union had entered into an agreement with LIC on 01.01.2002 and in pursuance of the said agreement, as contended by the learned counsel appearing for the Union, the LIC had started to receive premium from each of the members and employees who were on regular service of the Union through the competent authorities as per the agreement between the Union and LIC.

[21] In the case in hand, we do not find the Union has made any classification amongst its similarly situated employees. The policy of paying premium in pursuance of an agreement entered into between the Union and LIC has been applied equally. There is no question of any discrimination. The agreement entered into between the Union and the LIC was at the best interest of the employees of the Union. Moreover, the said agreement has not been challenged. Added to it, the appellant had received the benefits of gratuity in view of the agreement as entered into between her employer-Union and the LIC. In this situation, in the opinion of this court, it would be unreasonable for her to place

more demand which would be between the terms of the agreement between her employer and LIC.

[22] As we have said earlier, that the Union is not a profiteering organization and it is being run with limited resources. Further, we repel the submission of learned senior counsel appearing for the appellant that the employees of the Union and the State-government are similarly situated and the memorandums dated 16.07.1978 and 26.09.1979 should be adopted by the Union for the reason, that in the opinion of this court, the employees of the Union and the State-government cannot be equated with each other. It is the settled law that unequals cannot be treated equally.

[23] In the case of **Prem Singh** (supra), the Hon^{ble} Supreme Court had observed that the State government has made a classification distinguishing its employees who according to Supreme Court were found to be similarly situated and were discharging identical functions though they were engaged as work-charged employees, which was held to be discriminatory and violative of Articles-14 and 16 of the Constitution of India, and thus, struck down the relevant Rules. The said judgment is not to the benefit of the appellant.

[24] On the point of maintainability, under Article-12, it is not a government and its employees are not in government service though it can be treated as State, in view of the Public Interest and which is involved in this society and performing the public duties and also funded and supported by the State, it is treated as the State Functionary for limited purpose i.e. for entertaining a writ. Insofar as, interfering with the orders passed by the learned Single Judge is concerned, the same is tested on the ground whether the bye-laws of the society or any regulations have been violated. It is not the case of the appellant that the respondent-society has violated its bye-laws or any service regulations but the appellant is seeking relief beyond the scope of their service regulations and bye-laws of the society and further claims that the benefits extended under the rules and circulars of the State government should be extended.

[25] It is seen from the record and also from the arguments of the respondent counsel that there is no such adoption of these circulars or regulations have been followed by the respondent-society to extend the said reliefs to the appellant and he is not a government employee. In the absence of which the

appellant is not entitled for the reliefs claimed for as the respondent-society is not the State government and the rules & circulars issued by the government are not applicable, unless they are expressly adopted, no inference can be drawn in favour of the appellant. Accordingly, the argument of the learned senior counsel appearing for the appellant is negated and the relief sought for is declined.

[26] Having viewed thus and discussed here-in-above, in our opinion, the present appeal is devoid of any merit, and thus, dismissed. As a sequel, miscellaneous application pending, if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A. Ghosh

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