

**HIGH COURT OF TRIPURA**  
**A\_G\_A\_R\_T\_A\_L\_A**

**WA. No.25 of 2022**

Manik Majumder

.....Appellant

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

The State of Tripura & Others

.....Respondents

---

|                                           |   |                                                                     |
|-------------------------------------------|---|---------------------------------------------------------------------|
| For Appellant(s)                          | : | Mr. P. Roy Barman, Sr. Advocate.<br>Mr. S. Bhattacharjee, Advocate. |
| For Respondent(s)                         | : | Mr. D. Sarma, Addl. G.A.                                            |
| Date of hearing and<br>Judgment and order | : | <b>06.02.2024</b>                                                   |

---

**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. D. Sarma, 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 Gauhati High Court Rules as applicable against the judgment and order dated 03.12.2021 passed by the learned Single Judge in WP(C) No.800 of 2020.

The appellant has prayed for the following reliefs:

- “i. Admit the appeal.
- ii. Call for the records.
- iii. After hearing both the parties, set aside the impugned order dated, 03.12.2021 passed by the learned Single Judge, in WP(C)No.800 of 2020.”

[3] The Case of the appellant is that, initially the appellant was engaged as MPW w.e.f., 01.12.1998 under the Kamalpur Nagar Panchayat. But the date of engagement of the appellant as MPW has been reckoned as 02.08.1999 by the respondents. Thereafter, in pursuance to the recommendation of the Kamalpur Nagar Panchayat, by Order, dated, 21.11.2009 issued by the Executive Officer,

Kamalpur Nagar Panchayat, the service of the appellant was regularized. On attaining the age of superannuation, the appellant retired from service on 24.11.2015. After retirement, the appellant was given extension of service. But after retirement, the appellant was not given regular monthly pension and other pensionary benefits.

[4] The appellant submitted representations to the respondents seeking regular monthly pension and other pensionary benefits by taking into consideration 50% of the service rendered by him as DRW/MPW before his regularization along with his regular service but with no result. Hence, the writ petition No. 800 of 2020 has been filed by the petitioner-appellant before this Court. In the writ petition, the appellant relied on Memos, dated, 16.8.1978, 26.09.1979, 19.07.1982 & 25.02.10, issued by the Finance Dept., Govt. of Tripura, the learned Single Judge by order, dated, 30.12.2021, disposed of the WP(C) No. 800 of 2020. The learned Single Judge by the impugned order held, that, the appellant did not have 10 years of qualifying service under CCS(CCA) Pension Rules & also held, that, the Memos relied on by the appellant have not been adopted by the Kamalpur Nagar Panchayat. The learned single Judge has directed the Kamalpur Nagar Panchayat to proceed to determine the eligibility of pension to the appellant & hence the instant appeal.

[5] Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the appellant has submitted that 50% of the service rendered by him before his regularization should be counted for the purpose of pension and other pensionary benefits. The appellant further contended that the regularization of the appellant was otherwise due and it was properly done and the approval, if any, of the concerned Dept. deemed to be given.

[6] It has been further contended that as approval of similarly situated 6 DRWs of Kamalpur Nagar Panchayat was given by relaxation of age and education qualification, the appellant would have been also given *post-facto* approval of regularization. After taking the service of the appellant from 02.08.1999 to 30.09.2009 and thereafter regularizing the service of the appellant w.e.f. 01.10.2009, it is unjust and arbitrary to deny the appellant regular monthly pension and other pensionary benefits by ignoring the total service rendered by him as DRW/MPW w.e.f. 02.08.1999 to 30.11.2015.

[7] The learned Single Judge fell in error by not considering, that, after taking service of the appellant from 02.08.1999 to 30.11.2015 continuously without any break, first in the capacity of DRW then on regular basis, it is unfair and unjust to deprive the appellant of regular monthly pension and pensionary benefits by holding, that, the regularization of the appellant was without the approval of the competent authority. The learned Single Judge ought to have held, that, the Memos, dated, 16.8.1978, 26.09.1979, 19.07.1982 and 25.02.2010, relied on by the appellant in the writ petition, are applicable to the appellant.

[8] Though, it is not pleaded by the respondents, that, the memos relied on by the appellant in the writ petition were not applicable to the appellant, but the learned Single Judge has erroneously held, that, those memos are not applicable to the appellant. The learned single Judge ought to have held that, there had been deemed approval of the regularization of the service of the appellant by the respondents Nos. 1 & 2.

[9] Direction of the learned Single Judge upon the respondents Nos. 3 & 4 to decide as to whether the appellant is eligible for pension is infructuous direction, because without taking into consideration 50% of the past service before regularization, the appellant did not have qualifying service of 10 years in his credit. The learned Single Judge failed to consider, that for no fault of the appellant, the appellant has been deprived of regular monthly pension and other pensionary benefits. When none of the respondents has taken the plea, that in view of the terms and conditions of the order of regularization, the pay and salary of the appellant would be required to be borne by the respondents Nos. 3 & 4, the learned Single Judge by relying on the terms and conditions of the order of regularization has arrived at a conclusion which is against the principle of fairness and reasonableness.

[10] On the aforesaid factual backgrounds, Mr. Roy Barman, learned senior counsel has invited our attention to the memorandums issued time to time by the Finance Department, Government of Tripura stipulating that in case of contingent workers, half the period of continuous service rendered by a contingent employee, shall be counted for consideration of payment of pension, etc. Learned senior counsel has submitted that the respondent nowhere in their counter affidavit have stated that respondent-Nagar Panchayat has not adopted the aforesaid

memorandums issued by the Finance Department, Government of Tripura, and according to learned senior counsel, these memorandums are equally applicable to the employees of Nagar Panchayats.

[11] Mr. D. Sarma, learned Addl. G.A. appearing for the respondents has submitted that the service of the appellant was not regularized by the competent authority. The respondents also contended that, 50% of service rendered by the appellant prior to his regular service would have been taken into consideration if the appellant has been regularized by the competent authority. It has been further contended that the respondents Nos. 3 & 4 stated, that, the approval letter of regularization of Casual Worker/ DRWs was received from the Additional Secretary, Govt of Tripura in the Urban Development Dept., but in the same letter, the name of the appellant was missing due to his superannuation. The respondents Nos. 3 & 4 also contended that, the appellant was not regularized by the competent authority.

[12] Refuting the submission of learned senior counsel for the appellant, Mr. Sarma, learned Additional GA appearing for the respondents has submitted that the memorandums relating to counting half of the period of past service as contingent worker shall not be applicable to Nagar Panchayats. It has been further contended that on 30/11/2015 the appellant has retired from service, but until his superannuation period his service was not been regularized by the Competent Authority. Furthermore, it is pertinent to be mentioned here that an approval letter of regularization of Casual workers/DRW was received Vide No.F.1 (20) UDD/DUD/2012(P-4)/9023-32, dated-04/01/2018 from the Additional Secretary to the Govt. of Tripura in the Urban Development Department but on that very letter, the name of the applicant was missing due to his superannuation. Hence, the appellant is not entitled for pension as well as gratuity benefit as his job was not regularized by the Competent Authority.

[13] It is stated that the appellant's service was regularized by the Nagar Panchayat on the recommendation of the body of Kamalpur Nagar Panchayat with a condition that his pay will be managed by the Kamalpur Nagar Panchayat from its own revenue and that does not mean that he is a regular employee under the approval of the Competent Authority for getting all benefits under CCS (Pension) Rules, 1972 and including gratuity etc. In the said order it is clearly mentioned that

the wages of the appellant were increased not salary, because the appellant was never a regular employee under the approval of competent authority.

[14] In view of above, this Court feels that there is no evidence to justify that Nagar Panchayat has adopted the memorandums issued from time to time by the Finance Department, Government of Tripura for counting of half of the period of past service of the contingent workers for extending the benefits of pension, etc. The service conditions of the employees of Nagar Panchayat are regulated by Tripura Municipality Act, and not by any statute of State government. Since there is no record that Nagar Panchayats have adopted those memorandums, we are of the opinion that the memorandums issued by the Finance Department, Government of Tripura for counting half of the period of past service of contingent workers shall not be applicable to the employees of Nagar Panchayat.

[15] In the order of regularization of the appellant, as surfaced in the order dated 21.11.2009, categorically mentioned that the pay and allowances would be paid from the revenue generated from own resource of Kamalpur Nagar Panchayat. Thus, it is aptly clear that all benefits if necessarily to be provided to the appellant by operation of any law, then, it would be considered by Kamalpur Nagar Panchayat and not by the State-respondents.

[16] In that view of the matter, the appeal preferred by the appellant is devoid of any merits and thus, dismissed confirming the order of the learned Single Judge. As a sequel, miscellaneous application pending, if any, shall stand closed.

**B. PALIT, J**

**T. AMARNATH GOUD, J**

*A. Ghosh*

ANJAN  
GHOSH

Digitally signed by  
ANJAN GHOSH  
Date: 2024.02.09  
16:39:39 +05'30'