

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 53 of 2024

Rama Laskar Choudhury,
wife of Ashok Kr. Paul, care of Sri Ashok Kr. Paul,
resident of Ramnagar Road No.7 (middle),
PO- Ramnagar, PS- West Agartala,
District- West Tripura, Pin-799002.

---Petitioner(s)

Versus

- 1. The State of Tripura,**
represented by the Commissioner & Secretary
to the General Administration (Administrative Reforms)
Department, Government of Tripura, New Secretariat Complex,
Gurkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex,
Sub-Division- Sadar, District- West Tripura.
- 2. The Commissioner & Secretary,**
Finance Department, Government of Tripura,
New Secretariat Complex, Gurkhabasti, Agartala,
PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar,
District- West Tripura.
- 3. The Lokayukta, Tripura,**
represented by its Registrar, Office Compound of the District Magistrate &
Collector,
West Tripura, PO- Agartala, PS- West Agartala, District- West Tripura, Pin-
799001.
- 4. The Tripura State Legal Services Authority,**
represented by its Member Secretary,
Old District & Sessions Judge Court Complex,
PO- Agartala, PS- West Agartala, District- West Tripura, Pin-799001.

---Respondent(s)

For Petitioner(s)	:	Mr. P Roy Barman, Sr. Advocate. Mr. K. Chakraborty, Advocate.
For Respondent(s)	:	Mr. D. Sarma, Addl. GA. Mr. Raju Datta, Advocate.
Date of hearing	:	27.09.2024
Date of pronouncement	:	03.10.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order

This is a petition under Article 226 of the Constitution of India for seeking the following relief(s):

- (i) *Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, to transmit the records, lying with them, for rendering substantive and conscionable justice to the Petitioner, and for quashing/setting aside the impugned Letter dated 19.12.2023 (Annexure-19 supra);*
- (ii) *Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them (more particularly, the Respondent No.3), to count half of the continuous service period, as rendered by the Petitioner (on no work no pay basis), under the Tripura State Legal Services Authority, for the purpose of Pension, and thereupon, to grant Pension and other post retiral benefits, in favour of the Petitioner;*
- (iii) *Call for the records, appertaining to this Writ Petition;*
- (iv) *After hearing the parties, be pleased to make the Rule absolute in terms of (i) & (ii) above;*
- (v) *Costs of and incidental to this proceeding*
- (vi) *Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;*

[2] It is the case of the petitioner that from 08.12.2004 to 16.05.2012, the petitioner had worked for a total period of 7 years (on no work no pay basis), but on full time basis as Legal Service Worker Grade-II and subsequently as Service Worker Grade-1, under the Tripura State Legal Services Authority (TSLSA). On 16.05.2012, the petitioner resigned from her said service under TSLSA. On 17.05.2012, the petitioner joined as UDC, under Lokayukta, Tripura, on fixed pay basis. On completion of 5 years of service, the petitioner was regularized w.e.f. 17.05.2017. After serving for a total period of 9 years & 8 months in the Lokayukta Tripura, on attaining the age of superannuation, the petitioner proceeded to retirement 31.01.2022. Due to shortage of only 4 months for qualifying service of 10 years, the petitioner neither received pension, nor other post retiral benefits. Situated thus, the petitioner submitted representations dated 18.01.2023 & 28.06.2023 praying for counting half of the service period as rendered by her under TSLSA. As

per Finance Department's Memorandum dated 25.02.2010, half of the said period is to be counted towards pension. The petitioner served a Statutory Notice dated 05.07.2023 upon the respondents, seeking release of pension and post retiral benefits. By a notification dated 20.12.2022, one Smt. Rama Chakraborty who was a co-employee of the petitioner was granted the benefit of pension and post retiral benefits, by counting half of her past service period, rendered on no work no pay basis. But, the petitioner was deprived thereof. Thereafter, pursuant to a Writ Petition [WP(C) No.608 of 2023], filed earlier by the petitioner. the Respondent No.3 was directed to consider the case of the petitioner. On purported consideration thereof, the respondent No.3 issued a letter dated 19.12.2023, thereby rejecting the prayer of the petitioner. Aggrieved by the said action of the respondents, the petitioner has approached this Court for seeking relief.

[3] It is contended by the learned senior counsel for the petitioner that one of the then co-employee of the petitioner, namely, Smt. Rama Chakraborty who were conjointly promoted to the post of Legal Service Worker, Grade-I under TSLSA, vide the office order dated 15.05.2008 was granted the benefit of pension and other post retiral benefits by counting her past services rendered on no work no pay basis, as per the policy decision of the Finance Department, Government of Tripura.

[4] It is further contended by the learned senior counsel for the petitioner that both TSLSA and the Lokayukta, Tripura are administrative authorities, formed under the Tripura State Legal Services Authority Rule, 1998 and the Tripura Lokayukta Act, 2008 respectively. As per Rule 10 of the Tripura State Legal Services Rules, 1998 an employee of TSLSA is entitled to draw pay and allowance in the scales of pay as admissible to Tripura Government employees holding equivalent posts, and shall also have the same status, as of a Government employee.

[5] On course of his submission, learned senior counsel also contended that on account of her subsequent employment (i.e., under the Lokayukta, Tripura), since, there was a shortage of only 4 months for completing the qualifying service, it was obligatory on their part that by taking resort to the Finance Department's Memoranda dated 16.08.1978, 26.09.1979, 19.07.1982 & 25.02.2010 (Annexures- 10, 11, 12 & 13 respectively supra) and in conformity with Rule 13 & Rule 14 of the CCS (Pension) Rules, 1972, count the half period of the past services, as rendered by the petitioner under TSLSA for the purpose of pension, and thereupon, to grant the benefit of pension and other post retiral benefits, in her favour.

[6] It is apposite to extract herein below the relevant portion of Memorandum dated 26.09.1979.

(a) half the period of continuous service rendered by a contingent worker paid from 'wages' and engaged on full time may be counted towards pension when followed by employment in regular pensionable service.

[7] Learned senior counsel has also drawn the attention of this court to the Memorandum dated 25.02.2010 and the relevant portion is extracted herein under:

"After careful consideration of the matter, the Governor has been pleased to decide that the benefit of counting of half of the period of continuous service rendered by the DRWs/ Contingent Workers/ Monthly Rated Workers/ Casual Workers who were engaged on full time basis and paid from wages' would be counted towards pension following their regularization with the approval of the Finance Department. The benefit provided under this circular will not have any relevance in declaration of employees as quasi permanent/ permanent/counting of seniority/counting of period for the purpose of determining eligibility for extending benefit of CAS/ACP."

[8] Learned senior counsel for the petitioner on the basis of the memorandum cited above has urged before this court to allow the petition. This Court is amazed to learn that no judgment has been placed to support the case of the petitioner.

[9] On the contrary, Mr. Raju Datta, learned counsel appearing for the Lokayukta has drawn the attention of this court to the order of engagement dated

07.12.2004 issued by the Member Secretary to the petitioner herein. For ready reference the relevant portion of the order of engagement is extracted herein below:

ORDER OF ENGAGEMENT.

Smti. Rama Laskar Choudhury, W/O Shri Ashok Paul of Ramnagar Road No.7, P.O.- Ramanagar, Agartaala, West Tripura is hereby engaged as Grade -II Worker for a period of 6 (six) months w.e.f. the date she joins but by 10.12.2004 to work under the Tripura State Legal Services Authority, (Statutory body) Agartala on no work no pay basis with a monthly remuneration of Rs.3300/- (Rupees three thousand three hundred) only. Her service will be required in connection with various office works/Legal services Programmes. Her service will not be required when there will be no programme or fund from National Legal Services Authority, State Government or other is not available or her performance is not satisfactory. If she is willing to work, she is requested to report to the office of the Tripura State Legal Services Authority, North West corner of the Palace Compound, Agartala immediately.

[10] Mr. Raju Datta, learned counsel contended that the petitioner was never appointed as a salaried employee and it was clearly reflected in the order of engagement that her service will not be required when there will be no programme or fund from National Legal Services Authority, State Government or other is not available or her performance is not satisfactory.

[11] It is also submitted by Mr. Raju Datta, learned counsel that the appointment of the petitioner to the post of UDC (Fixed pay) was not done by following the norms and regulations and for appointment to the said post and no advertisement was published nor any interview was conducted. As a result, the petitioner is not entitled to get any relief as prayed for. It is worth mentioning here that Anneure-10,11,12,13&14 to the writ petition are issued/related with Finance Department, Government of Tripura regarding counting of past service but fact remains said notification/memorandum were never adopted by the answering respondents. Moreover, the writ petitioner had already submitted an application for voluntary retirement and her request for voluntary retirement was accepted and as such acceptance of her application for voluntary retirement, the petitioner cannot

claim for counting of her past service for the purpose of pension when there is no pension scheme under the Tripura Lokayukta Act, 2008 and on this ground itself the writ petition is liable to be dismissed.

[12] To support his contention Mr. Raju Datta, learned counsel for the respondent no.3 has relied on a judgment of the apex court in ***Director General, Doordarshan Prasar Bharti Corporation of India and Another vs. Magi H. Desai*** reported in ***2023 SCC Online SC 336*** where the apex court has observed as follows:

13. The respondent is governed by the Central Civil Services (Pension) Rules, 1972. Rules 13 & 14 of the 1972 Rules, which are relevant for deciding the controversy in the present case, read as under:

“13. Commencement of qualifying service - Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without Interruption by substantive appointment in the same or another service or post:

Provided further that -

(a) in the case of a Government servant in a Group 'D'.....

(b) in the case of a Government servant not covered by clause (a)

14. Conditions subject to which service qualifies:

(1) The service of a Government servant shall not qualify, unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression "Service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government.

(3) In the case of a Government servant belonging to a State Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify:

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply."

14. Rule 13 of the 1972 Rules provides for commencement of qualifying service. As per Rule 13, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. It

further provides that such officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post. Therefore, the services rendered on a substantive post or services rendered as officiating or temporary service shall be treated as qualifying service. Service rendered as casual/contractual cannot be said to be officiating or temporary service. Even the services rendered as temporary service can be considered as qualifying service provided that the officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post. Service rendered as casual/contractual cannot be said to be service rendered on a substantive appointment.

15. Under the circumstances and on a fair reading and interpretation of Rule 13 of the 1972 Rules, the High Court has committed a very serious error in observing that the services in temporary capacity will include the classes of temporary service such as casual or even contractual. The High Court has materially erred in observing that the contractual service would be qualified as service in a temporary capacity. The question is not whether the services rendered by a contractual employee would be qualified as service in a temporary capacity. The question is, whether, in fact, such contractual employee rendered the services as temporary or not.

16. Now so far as the submission on behalf of the respondent that in other departments under the scheme the employees of such departments are entitled to their services rendered as casual/contractual counted for qualifying service for pensionary/service benefits is concerned, merely because some other departments might have such schemes, the respondent shall not be entitled to the same benefit in absence of any scheme in the appellants' department/department in which the respondent rendered her services. The appellant Doordarshan Prasar Bharti Corporation of India is an autonomous independent department/body. As observed hereinabove, neither the rule nor the regularisation scheme provide that services rendered as casual/contractual shall be treated as temporary service and/or the same shall be counted for the purposes pensionary/service benefits.

[13] Mr. Raju Datta, learned counsel for the respondent No.3 has concluded his argument by stating that the petitioner herein has no case as none of the memorandum relied by her is not accepted by the Lokayukta, Tripura and no contractual employee appointed on “no work no pay” basis can demand for any pensionary benefit neither their period of past service as contractual worker can be counted for the service benefit. He further prayed to dismiss the writ petition.

[14] Mr. D. Sarma, learned Addl. GA appearing for the respondent no. 4, at the very outset has also drawn the attention of this court to the order of engagement dated 07.12.2004 issued by the Member Secretary to the petitioner herein. According to Mr. D. Sarma, learned Addl. GA it was already reflected in the order of engagement that the service of the petitioner will not be required when there will

be no programme or fund from NALSA or State of Govt. or if her performance is not satisfactory since her service was purely on the basis of “No work no pay”.

[15] Moreover, he has also drawn attention of this court to the Rule 12 and 14 of the “Tripura State Legal Services Authority (Conditions of Services and Salary and Allowance of the Officers and other Employees Rules, 2012” which are extracted herein below:

12. Absorption of existing officers and other employees - (i) The existing Legal Services Workers of Grade-1 & II and Group-D shall be absorbed in the corresponding posts they may be holding in the capacity of Legal Services Workers of Grade - 1 or Grade - II or Group-D on the commencement of these rules and shall be eligible for pay and allowances and other facilities as admissible to the State Government employees holding equivalent posts provided they fulfill the criteria regarding the age of retirement for such posts. In case the staff concerned employed does not complete 10 years continuous service in the corresponding posts on the date of absorption, he/she will have to be absorbed as a Fixed Pay employee and he/she will get regular scale on completion of further 5 years in the post. However, the staff concerned who has completed 10 years service in the corresponding posts will be absorbed under regular scale in the post.

14. The conditions of service and the Salary and Allowances of Officers and other Employees:-

(i) The officers and other employees shall be entitled to draw pay and allowances in the scale of pay at par with the State Government employees holding equivalent posts;

(ii) In all matters like age of retirement, pension, Death-cum-Retirement Gratuity, pay and allowances, leave, other benefits and entitlements the officers and other employees shall be governed by the State Government rules as are applicable to persons holding equivalent posts.

(iii) The officers and other employees shall be entitled to such other facilities, allowances and benefits as may be notified by the State Government, from time to time.

[16] It is contended by Mr. D. Sarma, learned Addl. GA that if these above mentioned rules are followed then the petitioner does not have any case and no relief can be granted to her. It is evident from the record that the petitioner resigned from her service on May, 2012 and the Gazette notification was published on 12th December, 2012. She resigned from her service much earlier than the “Tripura State Legal Services Authority (Conditions of Services and Salary and Allowance of the Officers and other Employees Rules, 2012” came into being. Therefore, the case of the petitioner cannot be entertained. He further prayed to dismiss the writ petition.

[17] Heard learned counsel for the parties and also perused the record.

[18] It is evident from the record that the Deputy Secretary, TSLSA has sent a letter dated 16-01-2024 to the Registrar, Office of the Lokayukta, Tripura conveying the decision of the TSLSA taken on the meeting held on 10-01-2024 with regard to the regularization of the past service of the petitioner. The relevant portions of the letter are as follows:-

"Agenda No.1-Discussion & decision on a correspondence received from the Registrar, Lokayukta regarding statutory notice dated 05-07-2023 (the letter may be seen at Flag-H) of Smt. Rama Laskar Choudhury in relation to counting her past service for the purpose of pension and other retirement benefit.

Resolution: All members present in the meeting discussed the issue and resolved that the service of Smt. Rama Laskar Choudhury at Tripura State Legal Services Authority as LSW-I & II cannot be counted as regular service as her service was 'no work no pay' basis and it's a non-pensionable job. The matter stands rejected".

[19] It is seen from the record that the petitioner was previously appointed on 07.04.2004 on "No work no pay" basis. A bare perusal of the order of engagement dated 07.04.2004 also shows that the her service would not be required when there would be no programme or fund from National Legal Services Authority, State Government or other is not available or her performance is not satisfactory. Moreover, the petitioner expressed her intention to go on premature voluntary retirement from contract service. Accordingly, TSLSA accepted her resignation in the 23rd Meeting held on 18.09.2012 which makes it evident that the petitioner did not get appointment under the Institution of Lokayuka through her previous employer TSLSA. But before acceptance of the resignation of the petitioner on 03.10.2012, the petitioner was appointed as Upper Division Clerk under the Lokayukta, Tripura on 17.05.2012 and the petitioner joined in the office of the Lokayukta before acceptance of her resignation by TSLSA. There was no scheme of voluntary retirement and there was no provision of voluntary retirement during the service period of the petitioner. The services of the petitioner being

engaged on “no work no pay” basis, it cannot be said that the letter submitted by the petitioner as voluntary retirement cannot be treated as voluntary retirement but the same amounts to resignation letter. Much before any rules were framed in respect of Tripura State Legal Services Authority, the petitioner resigned and joined Lokayukta. It cannot be said that it was an internal transfer or deputation and thus the petitioner is not entitled for considering the services rendered by her in Tripura State Legal Services Authority for computation of the services in Lokayukta for claiming the service benefit of 10 years.

[20] As far as the case of Smt. Rama Chakraborty, who was a co-employee of the petitioner, is concerned this court does find any force to the submission of the learned counsel for the petitioner to say that she got all the benefits as have been asked for in this writ petition. In that case the lady concerned had completed 10 years service in the corresponding posts which enable her to get the pensionary benefit and all other retiral benefits. But here is the case where the petitioner has first served in the Tripura State Legal Services Authority as contractual basis and also on “No work no pay” basis which is non pensionable job and then she resigned to join another service in Lokayukta where she has also not completed her 10 years of continuous service. So her past service is not liable to be counted to get pensionary and all other retiral benefits.

[21] With regard to the term “Technical Resignation, the GA (P&T) Department, Govt. of India has defined the term in the office memorandum vide No.DOPT-1669266628362 dated 24.11.2023 which reads as follows:

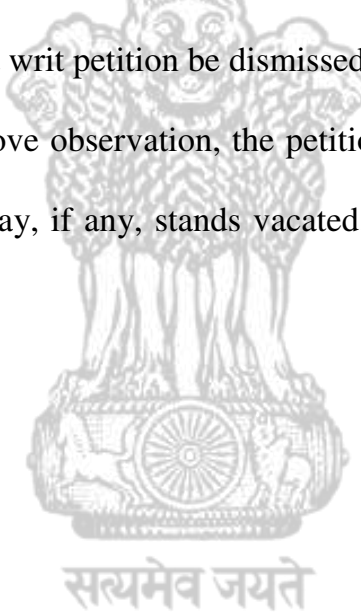
“As per Ministry of Finance OM No.3379-III(B)/65 dated 17th June 1965 the resignation is treated as a technical formality where a Government servant has applied through proper channel for a post in the same or some other Department, and is on selection, required to resign the previous post for administrative reasons. The resignation will be treated as technical resignation if these conditions met, even if the Government servant has not mentioned the word "Technical" while submitting his resignation. The benefit of past service, if otherwise admissible under rules, may be given in such cases. Resignation in other cases including where competent authority

has not allowed the Government servant to forward the application through proper channel will be treated as a technical resignation and benefit of past service will not be admissible. Also, no question of benefit of a resignation being treated as a technical resignation arises in case of it being from a post held on ad hoc basis."

[22] It is evident from the record that the petitioner has not completed her 10 years of service in the Lokayukta, Tripura. She served there for 9 years and 8 months which shows she was short of four months to complete the tenure of 10 years of continuous service. The petitioner even could not fulfill the criteria of continuous 10 years of service to get her pensionary benefits.

[23] In the corollary, this Court feels that the petitioner has not reached before this Court with clean hands and this court having found force in the submission as advanced by the learned counsel for the respondent No.3 and 4 is of the opinion that the instant writ petition be dismissed.

[24] With the above observation, the petition being devoid of merit stands dismissed. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.



JUDGE