

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.49 of 2024

Smt. Sumitra Debbarma

..... Appellant(s)

V E R S U S

The State of Tripura and others

..... Respondent(s)

For Appellant(s) : Mr. B. N. Majumder, Sr. Advocate,
Mr. D. J. Saha, Advocate,
Mr. B. Paul, Advocate,
Mr. G. Saha, Advocate.

For Respondent(s) : Mr. D. Bhattacharya, Sr. Advocate,
Mr. D. Sarma, Addl. G.A.,
Mr. S. Saha, Advocate.

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

_O_R_D_E_R_

25/06/2024

Heard learned counsel for the parties.

[2] The writ petitioner, a Group-D employee, appointed on compassionate ground on 20.12.2000, made an application for voluntary retirement on 04.06.2020 before completion of 20 years of qualifying service as is required under Rule 48-A of the C.C.S. (Pension) Rules, 1972. The competent authority accepted her application for voluntary retirement *with effect from* 31.07.2020 vide order dated 24.06.2020. When her pension papers were being processed, the office of Accountant General on scrutiny observed that she had only completed 19 years 07 months and 12 days of her service which is less than 20 years of qualifying service required for acceptance of voluntary retirement under Rule 48-A, sub-Rule 2. Therefore, they declined to authorize the pension and other retiral benefits. The service book of the writ petitioner along with other documents was returned to examine the matter in communication with the

Finance Department, Government of Tripura. The writ petitioner was serving under the office of the Inspector General of Police, Crime Branch, Agartala, Tripura. The order of acceptance of her resignation was also issued on 24.06.2020 by the DIGP (Crime Branch), Agartala, Tripura. Since the writ petitioner found loss of pension and other retiral benefits as an effect of the acceptance of her voluntary retirement before completion of the qualifying service of 20 years under Rule 48-A, she preferred to approach this Court in WP(C) No.631 of 2023 with the following prayers:

- “i) Issue RULE NISI;
- ii) Issue RULE calling upon the Respondents to show cause as to why a writ of Certiorari shall not be issued quashing/cancelling/ setting aside the letter of acceptance for voluntary retirement and the order of struck off dated 24.06.2020, order dated 27.07.2020 and the impugned communication/ order dated 28.07.2023, issued by the Superintendent (Crime Branch), office of the IGP, Crime & Intelligence, respectively. (Annexure-3. Annexure-4 & Annexure-8, supra);
- iii) Issue RULE calling upon the Respondents or each one of them as to why alternatively a writ in the nature of mandamus shall not be issued to the Respondents directing / mandating / commanding to treat the Petitioner to have been retired from the service on completion of her 20 (twenty) years qualifying service on and from 18.11.2020 by altering/ modifying the acceptance letter of voluntary retirement of the Petitioner dated 24.06.2020 (Annexure-3, supra);
- iv) Issue RULE calling upon the Respondents or each one of them as to why any other appropriate writ / writs, Order/ Orders shall not be passed for giving complete and full relief to the petitioner.
- v) Issue Rule NISI calling upon the State Respondents or each one of them to show cause as to why a Writ of Mandamus shall not be issued directing / commanding / mandating the State Respondents to extend the pension benefit of the Petitioner by modifying the letter of acceptance of voluntary retirement of the Petitioner treating her to have been retired voluntarily after completion of 20 (twenty) years of service of the petitioner.

AND

In case the Respondents show cause or not, upon hearing the sides, your Lordships may be pleased to make the Rule absolute in terms of the prayers i to vi;

[3] However, the learned writ Court after evidencing the relevant pension rules proceeded to hold that the writ petitioner has not completed 20 years of service, and, therefore, she was not entitled to any relief in this regard.

[4] Mr. B. N. Majumder, learned senior counsel for the writ petitioner submits that application for voluntary retirement before the qualifying period of 20 years could not have been entertained and as such, the impugned order dated 24.06.2020 was non-est in the eye of law. Writ petitioner's application, even if treated as a resignation letter, could also entail forfeiture of past service in view of the Rule-26 of the Pension Rules. The writ petitioner, after communication of the letter of the Accountant General, also made a representation before the competent authority for adjustment of her leave to enable her to complete the short fall period of qualifying service of 20 years, which was not responded. Earlier, the writ petitioner had approached this Court in WP(C) No.813 of 2022 which was disposed of by an order dated 28.04.2023 with a direction to the respondents to consider her representation within a stipulated period. On consideration, vide order dated 28.04.2023, the same was rejected as she was not eligible to get pensionary benefits as per provision of Rule 48-A of the C.C.S. (Pension) Rules, 1972.

[5] Learned senior counsel for the writ petitioner submits that writ petitioner being a Group-D employee, appointed on compassionate grounds and facing several health related ailments, made the application before the completion of 20 years of qualifying service due to ignorance of the relevant rules. The authority should not have entertained the application in breach of the rules which has led to these consequences upon this widow-petitioner. Learned senior counsel for the writ petitioner also submits that the competent authority has the power to relax the operation of any of the rules if it causes undue hardship in any particular case under Rule-88 of the Pension Rules. In such circumstances, liberty may be given to the writ petitioner to approach the competent authority with an

application for relaxation of the relevant conditions of qualifying service under Rule 48-A for enabling the petitioner to avail the pensionary benefits.

[6] Mr. D. Bhattacharya, learned senior counsel for the respondent-Accountant General has referred to Rule 48-A which requires qualifying period of 20 years for availing pensionary benefits. It is submitted that the stand of the Accountant General is in consonance with the law.

[7] Mr. D. Sarma, learned additional Government Advocate submits that in case the writ petitioner is granted liberty to approach the competent authority with a request for relaxation of the conditions prescribed under Rule 48-A of the Pension Rules, it may be considered in accordance with law.

[8] Having regard to the submissions of the learned counsel for the parties and the fact that the writ petitioner is a widow and semi-literate lady appointed on compassionate grounds who inadvertently made such an application for voluntary retirement prior to completion of 20 years of qualifying service which stands accepted by the competent authority under Rule 48-A before completion of 20 years of service, we deem it proper to give a liberty to the petitioner to approach the competent authority for invocation of the power of relaxation conferred on her under Rule 88, Chapter- XII, Miscellaneous of the CCS (Pension) Rules. The Rule 88 is quoted hereunder:

“88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner: Provided that no such order shall be made except with the concurrence of the Department of Pension and Pensioner's Welfare”.

[9] Rule 88 provides the power of relaxation to the Ministry or Department if it is satisfied that the operation of any of these rules, causes undue hardship in any particular case. In that case the Ministry or department as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

[10] On receipt of such application by the writ petitioner within a period of four weeks from today, the competent authority would consider the same and take a decision as to whether the conditions under Rule 48-A can be dispensed with or relaxed in the case of the petitioner. Needless to say, in case the competent authority decide to relax the conditions of qualifying service in the case of the writ petitioner, the same be communicated to the Office of the Accountant General for further processing of the case of the writ petitioner. Let such decision be taken within a period of three months from the date of receipt of the representation along with the copy of this order. The impugned judgment is interfered in view of the reasons recorded hereinabove.

[11] Accordingly, the instant appeal is disposed of. Pending application(s), if any, also stands disposed of.

(S. D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ