HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.351 of 2024

Smt. Susmita Mallik & others

.....Petitioner(s);

Versus

The State of Tripura & others

.....Respondent(s)

For Petitioner(s) : Mr. A. Bhaumik, Advocate,
Mr. S. Dey, Advocate.

For Respondent(s) : Mr. Kohinoor N. Bhattacharyya, G.A.,
Ms. Kahina Reang, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

24/05/2024

Petitioners have approached this Court seeking the benefit of past service for all purposes including pension, gratuity, leave at credit, pay protection, counting of period for the purpose of determining five years' fixed pay period and extend the arrears of financial benefits in their favour upon grant of such benefit. The brief facts of the case as pleaded are referred to hereinafter. Petitioners contend that they were initially appointed to the post of Graduate Teacher under the Directorate of Elementary Education. They participated in the fresh selection process after obtaining No Objection Certificate from their previous employer and got selected in the post of Post Graduate Teacher. Thereafter, they also took technical resignation which was accorded to them to join in the new post of Post Graduate Teacher. They joined in the new post of Post Graduate Teacher through proper channel and also took technical resignation to join in the new post. The Ministry of Personnel, Public Grievances and Pensions, Government of India has also issued an office memorandum dated 17.08.2016 regarding the effect of the technical resignation. The said memo is also adopted in the State of Tripura and it

provides that in case of Technical Resignation, the past service of an employee is counted for all purposes. The resignation is treated as technical resignation if the employee has applied through proper channel for a post in the same or some other department and on selection is required to resign from the previous post for administrative reasons. Petitioners contend that similarly situated teachers had approached this Court by filing WP(C) No.722/2022 and vide judgment and order dated 17.03.2023, this Court had directed the department to consider their representations. Thereafter, vide memorandum dated 17.12.2023, three writ petitioners have been granted the benefit of past service. In WP(C) No.141/2024 in the case of ***Sri Anup Baul & others v. The State of Tripura & others***, this Court directed the respondents to consider the representation of the petitioners and pass appropriate order in light of the memorandum dated 17.12.2023. According to the petitioners, the instant case is also covered by the judgment and order dated 06.01.2021 passed in WP(C) No.234/2020 and other batch matters wherein this Court extended benefit of past service to persons appointed to teaching posts from non-teaching posts. The representation made by the petitioners on 30.04.2024 has not yet been acted upon. Therefore, they have approached this Court.

2. Mr. A. Bhaumik, learned counsel for the petitioners, submits that the respondents may be directed to consider the representation of the petitioners in accordance with law and grant the aforesaid benefits. He also relies upon the case of ***Sri Dilip Shil & others v. The State of Tripura & others*** in ***WP(C) No.722 of 2022*** wherein pursuant to the order dated 17.03.2023 passed by this Court, those writ petitioners have been granted the benefit of past service. As

such, the respondents may be directed to take a decision in accordance with law in respect of the present petitioners also.

3. Mr. Kohinoor N. Bhattacharyya, learned Government Advocate for the respondents-State, submits that the instant petition has been taken up for the first time. Therefore, instructions are awaited. However, since the consideration on this issue at the first instance lies before the competent authority under the department; in case the representation of the petitioners has not been considered on account of enforcement of the Model Code of Conduct, the respondent-department would consider it in accordance with law in a suitable time as may be directed by this Court.

4. Having regard to the nature of relief sought for by the petitioners, since the representation of the petitioners is pending before the concerned respondent authority, this Court without expressing any opinion on the merits of the case deems it proper to direct the competent authority/respondent No.2 to take a decision upon their representation in accordance with law within a reasonable period preferably within 16(sixteen) weeks from the date of receipt of copy of this order.

5. The instant petition is disposed of with the aforesaid observations. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ

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