

**HIGH COURT OF TRIPURA
AGARTALA**

WA No. 69 of 2022

Sri Pintu Chowdhury,
S/o Late Amalendu Chowdhury,
resident of village & PO-Anandanagar,
Agartala, District-West Tripura,
Pin-799004.

..... Appellant(s)

Vs.

- 1. The Union of India,**
represented by the Secretary
to the Government of India,
Ministry of Textiles,
Udyog Bhavan, New Delhi, 110001.
- 2. The Director (East Zone),**
Weaver's Service Centre,
Government of India,
Ministry of Textiles,
IIHT Campus, Jawahar Nagar,
Khanapara, National Highway No.37,
Guwahati-781022.
- 3. The Development Commissioner for Handlooms,**
Ministry of Textiles, Udyog Bhavan,
New Delhi-110001.
- 4. The Assistant Director,**
Weaver's Service Centre,
Gurkhabasti, Agartala,
West Tripura, Pin-799006.
- 5. The Deputy Director (Head of Office),**
Weaver's Service Centre,
Gurkhabasti, Agartala,
West Tripura, Pin-799006.
- 6. The State of Tripura,**
represented by the Secretary,
Government of Tripura,
Tribal Welfare Department,
Kunjaban, New Capital Complex,
Agartala, West Tripura, Pin-799006.
- 7. Tripura Tribal Welfare Residential
Educational Insitutions Society,**
under Tribal Welfare Department,
Government of Tripura, represented by
its Member Secretary, Gurkhabasti,
Agartala, West Tripura, Pin-799006.

8. The Member Secretary,
Tripura Tribal Welfare Residential
Educational Institutions Society,
Tribal Welfare Department,
Government of Tripura, g
Gurkhabasti, Agartala, West Tripura, Pin-799006

.....**Respondent(s)**

For Appellant(s)	:	Mr. P Roy Barman, Sr. Advocate. Mr. K Chakraborty, Advocate.
For Respondent(s)	:	Mr. B Majumder, CGC. Mr. D Sharma, Addl. GA
Delivery of judgment	:	12.09.2024
Whether fit for reporting	:	YES.

BEFORE
HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

Judgment & Order (Oral)

(Arindam Lodh J)

This is an appeal under Rule 2 of Chapter V-A of the Gauhati High Court Rules, read with Article 226 of the Constitution of India, against the impugned judgment and order dated 04.02.2022 passed in WP(C) No. 854 of 2021 whereby the learned Single Judge had dismissed the Writ Petition filed by the present appellant.

[2] By means of filing the present appeal, the appellant has prayed for the following reliefs:-

- I. Admit this Writ Appeal;*
- II. Call for the relevant records, pertaining to the impugned judgment & Order (Oral) dated 04.02.2022, passed in WP(C) No. 854 of 2021;*
- III. In the interim, during the pendency of this Appeal, stay/suspend the operation of the impugned Judgment & Order (Oral) dated 04.02.22, passed in WP(c) No.854 of 2021;*

- IV. *After hearing the parties, in terms of the GROUNDS set forth above, be pleased to quash/set aside the impugned Judgment & Order (Oral) dated 04.02.2022, passed in WP(c) No.854 of 2021, passed by the Learned Single Judge, and thereafter, allow this Writ Appeal, thereby quashing/setting aside the impugned Order of Termination dated 16.11.2021 & the impugned Release Order dated 24.11.2021 (Annexures-24 & 25 respectively to the WP), and thereupon, direct the Respondent Nos. 1 to 5 to reinstate the Appellant in service, in the post of Junior Weaver, under the Ministry of Textiles, Government of India, with all consequential benefits, including arrears of salary;*
- V. *And pass any other Order(s) as may be deemed fit and proper for ends of justice.*

[3] Undisputed facts are that the writ petitioner was appointed under Tripura Tribal Welfare Residential Educational Institutions Society [for short, TTWREIS] under Tribal Welfare Department, Government of Tripura. He was appointed as Craft Teacher. While he was discharging his services as Craft Teacher under TTWREIS, the petitioner was attracted to an advertisement dated 1st August, 2015 (Annexure- 2 to the writ petition) issued by Central Employment Exchange, under the Government of India. He applied for the post of Junior Weaver, having obtained "No Objection Certificate", to pursue the selection process. Accordingly, the petitioner appeared before the Selection Committee and came out successful.

[4] Vide memorandum dated 18.01.2016 (Annexure-8 to the writ petition) the petitioner was appointed as Junior Weaver in Weaver's Service Centre, Agartala, a Government of India organization under the Ministry of Textiles, respondents No.1-5 herein. He accepted the offer of appointment and on such

acceptance, the respondent No.2 issued appointment letter in his favour in the post of Junior Weaver.

[5] While discharging his duties as Junior Weaver, all on a sudden the competent authority of Weaver's Service Centre received a complaint from one Utpal Sutradhar stating *inter alia* that the petitioner misrepresented the fact that he was a government employee, since TTWREIS is not a Government Department. He alleged that the petitioner was not entitled to relaxation of age as the relaxation clause was applicable only to candidates who served in any Government Department.

[6] The competent authority of the Ministry of Handloom and Textiles made a query to the competent authority of the TTWREIS to know whether TTWREIS was/is a government organization. In reply, the competent authority of TTEWREIS informed that it was not a government department, but, it was a "Society" registered under the Societies Registration Act.

[7] The matter was also taken up with the Department of Personnel and Training (DoPT), Government of India which informed that TTWREIS was not a Government Department and it was run by the Society. Based on those communications the competent authority had made a communication to the petitioner that he had misrepresented the fact that his earlier employer was a Government Department and by that way, he committed a grave misconduct. Accordingly, his service was terminated vide order dated 16.11.2021. According to respondent No.5, vide order dated 24.11.2021 the petitioner was relieved from service in the afternoon of 24.11.2021. The petitioner has challenged the said impugned order of termination and relieving him from service by means of filing a writ petition.

[8] When the matter was heard, learned single judge of this court while disposing of the writ petition held that since TTWREIS was not a Government Department, so the petitioner should not be treated as a Government servant/employee. It was further held that the rule of relaxation only apply in case of a person holding a civil post under the Government Department. Learned Single Judge in his judgment has referred to Rule 2(h) of CCS (CCA) Rules, 1965.

[9] Furthermore, it was noted in the order dated 16.11.2021 that the petitioner was not a government servant and the said fact had been confirmed by the Additional Secretary to the Government of Tripura, TTWREIS. The relevant portion of the order dated 16.11.2021 is extracted hereunder:

".....Moreover, relaxation of upper age limit for government servants is applicable only to the Central Government Civilian Employees holding civil posts and same is not applicable to personnel working in autonomous/statutory bodies, Public Sector undertaking etc., which are governed by regulations/statute issued by the concerned administrative Ministries/Departments as per the instructions/guidelines issued by DoP&T, vide para 3 of OM No.15012/2/2010-Estt(D) dated 27th March, 2012."

[10] It is pertinent to mention herein that the respondents No.1-5, that is, the Union respondents have been providing the petitioner the service benefits in view of the interim order staying the order of termination dated 16.11.2021.

[11] On the aforesaid background of facts, we have heard Mr. P Roy Barman, learned Sr. counsel assisted by Mr. K Chakraborty, learned counsel appearing for the petitioner, Mr. D Sharma, learned Addl. GA appearing for the respondents No.6, 7 & 8 and Mr. B Majumder, learned CGC appearing on behalf of respondents No.1, 2, 3, 4 & 5, hereinafter referred to as the union respondents.

[12] Mr. Roy Barman, learned senior counsel has submitted that the petitioner having obtained 'No Objection Certificate' from his

previous employer *i.e.* TTWREIS had applied for the post of Junior Weaver in pursuance of the advertisement issued by the Ministry of Handloom and Textiles, Government of India. Upon successful selection, he submitted a technical resignation from the post of Craft Teacher under TTWREIS (respondents No. 6 & 7) and joined to the post of Junior Weaver under the Union respondents (respondents No.1-5) and his age was relaxed by the union respondents by way of invoking relaxation clause in the relevant recruitment rules.

[13] According to learned senior counsel appearing for the petitioner, since the union respondents knowing fully well that at the time of appointment his age was more than the prescribed age of 30 years, they on their own wisdom had relaxed and selected the petitioner for appointment to the post of Junior Weaver. As such, the union respondents are estopped from taking the plea of misrepresentation of fact that the petitioner had suppressed that he was not a government servant under any Government Department of the Government of Tripura.

[14] Next submission as advanced by learned senior counsel is that TTWREIS, released the petitioner on lien, and as such termination of his service as Junior Weaver by the union-respondents, entitles him to get reinstatement in his previous service under TTWREIS as Craft Teacher.

[15] Learned Sr. counsel has urged this court that it is a fit case to attract the *doctrine of equity* for the purpose of reinstatement of the petitioner in the post of Craft Teacher under TTWREIS. It is further argued that the principle enunciated by the Apex court in ***Delhi Subordinate Services Selection Board and Another vs Seema Kapoor*** [order dated 22.07.2021 delivered in Civil Appeal

No.4461/2021] as relied upon by Learned Single Judge while deciding the instant case cannot apply to the facts of the instant case.

[16] To oppose the submission of the learned senior counsel appearing for the petitioner, Mr. Sharma, learned Addl. GA has submitted that after resignation of the petitioner from the post of Craft Teacher under TTWREIS, the said post became abolished and at present there is no existence of the said post. However, pursuant to this Court interim order, the petitioner remains on payroll without any work responsibilities.

[17] Learned Addl. GA appearing for the State of Tripura i.e. respondents No.6, 7 & 8 has contended that TTWREIS is an autonomous body being constituted under Societies Registration Act and in no way related to the Government of Tripura. The said society is financed by the Central Government.

[18] Learned Addl. GA has further submitted that TTWREIS had entered into a Memorandum of Understanding (for short 'MOU') with National Educational Society for Tribal students on 23.03.2020. Thereafter, the said organization has made its own Recruitment Rules and at present, the recruitments are made through National Testing Agency. At this juncture, learned senior counsel, Mr. Roy Barman, appearing for the petitioner has drawn the attention of this court that all existing employees as on 23.03.2020 were retained under the said MOU.

[19] To conclude, Mr. Sharma, learned Addl. GA has submitted that the State Government has no role or control over the recruitment process under TTWREIS. Furthermore, the petitioner in his entire writ petition has not prayed any relief/s neither against the state respondents nor against the TTWREIS.

[20] Mr. Majumder, learned CGC appearing for the union respondents has submitted that appointment of the petitioner was made dehors the relevant recruitment rules carved out for the post of Junior Weaver and the union respondents had terminated his service following the relevant rules. The matter was taken up with the DoP&T, Government of India which confirmed that the TTWREIS was not a Government Department meaning thereby that the petitioner was not a government servant/employee. Even TTWREIS in reply to a query made by the union-respondents admitted that the organization was purely a society and the Government of Tripura had no control over it.

[21] We have considered the submissions of the learned counsel appearing for the parties. We have also perused the advertisement and the relevant rules as well as the ratio laid in case of **Seema Kapoor** (supra) relied upon by learned Single Judge while disposing of the writ petition.

[22] As observed in the preceding paragraphs, learned Single Judge had taken into consideration the relevant rules, particularly, Rule 2(h) of CCS(CCA) Rules, 1965 and the reply given by the competent authority of TTWREIS in respect of the fact that TTWREIS was purely a society and was not under the control of the Government of Tripura vis-a-vis the confirmation in that respect by the DoP&T, Government of India. Here, it would be relevant to reproduce the observations and the decision of the learned Single Judge while dismissing the writ petition filed by the petitioner:

"18. Moreover, Mr. Majumder, learned Asst. S.G. has, having referred to Tirumala Tirupati Devasthanams versus K. Jotheeswara Pillai and Another reported in (2007) 9 SCC 461 contended that there is no rule to consider the services of the employees of the societies like TTWREIS for purpose of relaxation. Hence, there being no statutory provisions or rules providing exemption from eligibility criteria, no mandamus can be issued

against the respondents No.1 to 5 for considering the case of the writ petitioner by granting him relaxation of age for direct recruitment.

19. Having appreciated the submissions of the learned counsel for the parties and scrutinised the records as produced along with the writ petition and the replies filed by the respondents what has surfaced is that unless the petitioner is deemed or treated as the Government servant, he is not entitled to exemption from any provision of the recruitment rules and he is also not entitled to the age relaxation by 10 years. Thus, the moot question that falls for consideration of this court is whether the said Society namely Tripura Tribal Welfare Residential Educational Institutions Society [TTWREIS] where the petitioner was appointed as the Craft Teacher can be treated as a Government Department or not. The Society has been promoted by the Tribal Welfare Department for the object of enhancing the capacity of employability of the target group. Funds are flowing from different sources. But admittedly the society is governed by its bye-laws. The said society may be treated as the instrumentality of the State, but not as the Government Department."

[23] In addition, in **Seema Kapoor** (supra) the Hon'ble Supreme court has categorically held that the provision for age relaxation is made only for civil employees of the central government and not to the employees of the autonomous bodies, public sector undertakings etc. The relevant observation made in **Seema Kapoor** may be reproduced hereunder, for convenience:

"8. We have heard learned counsel for the parties and find that the order passed by the Central Administrative Tribunal and that of the High Court are not sustainable. Firstly, the High court has quoted a wrong provision in the order passed relating to subsequent advertisement. Secondly the benefit of age relaxation is permissible for government servant and departmental candidates. It is not even the stand of the respondent that she is government servant and, rightly so, that she is employed in an autonomous body i.e. municipal corporation established under the specific statute. The expression "departmental candidates" is in respect of the candidates who are working in the concerned department, i.e. education. The circular of the Government of India dated 27.03.2012 had made it explicitly clear that the benefit of age relaxation is only made for civil employees of the central government and not to the employees of the autonomous bodies, public sector undertaking etc. Therefore, the respondent, as an employee of the autonomous body, i.e. the corporation, is not entitled to age relaxation either as a departmental candidate or as a government servant."

[24] According to us, the main question that arises for consideration in the instant appeal is whether the petitioner is a government employee or not? In the light of the admission on behalf of the respondents No. 6, 7 & 8, that TTWREIS was/is not a Government Department, needless to say, the petitioner was not a government servant when he had joined in the post of Junior Weaver under the union-respondents.

[25] We may gainfully extract Rule 2(h) of CCS (CCA) Rules, 1965, which reads as under-

"2. Interpretation -

In the rules, unless the context otherwise requires,

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XXXXXXXXXXXXXXXXXXXX

(h) "Government servant" means a person who -

(i) is a member of a Service or holds a civil post under the Union, and includes any such person on foreign service or whose services are temporarily placed at the disposal of a State Government, or a local or other authority;

ii) is a member of a Service or holds a civil post under a State Government and whose services are temporarily placed at the disposal of the Central Government;

iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government;"

[26] On careful reading of the aforesaid provision, it is crystal clear that a government servant must hold a civil post under the State or Union of India. In view of the said rule, the post of Craft Teacher under the TTWREIS cannot be treated to be a civil post. As such, the petitioner cannot be said to be the holder of a civil post.

[27] Again, if the petitioner does not hold a civil post, his service is not protected under Articles 309, 310 & 311 of the Constitution of India. At the cost of repetition, we reiterate that by the communication dated 3rd August, 2017 addressed by Additional

Development Commissioner (HL), Ministry of Textiles, office of the Development Commissioner for Handlooms addressed to the Director(East Zone) WSC, Guwahati, it was clearly stated that *"keeping in view of the limited number of eligible candidates, Sri Pintu Chowdhury was also called to attend the selection test held on 05.01.2016 conditionally subject to furnishing of necessary documents to proof himself as government servant."* In the said communication dated 3rd August, 2017 it was also stated that *"the extant Recruitment Rules to the post of Junior Weaver to WSC notified in gazette which have the force of law the age limit for direct recruits is not exceeding 30 years which is relaxable for government servants up to the age of 40 years."* The said communication also made reference to Rule 2(h) of CCS (CCA) Rules, 1965 which defines the government servant.

[28] Reference was made to the reply given by competent authority of TTWREIS which clearly stated that *"the employees under the Tripura Tribal Welfare Residential Educational Institutions Society (TTWREIS) do not bear the status of government servants as defined under Rule 2(h) of CCS (CCA) Rules, 1965."* TTWREIS was registered on 15.03.1997 under Societies Registration Act, 1860 but the employees of the society are also covered under conduct rules or service rules of the state government for earned leave, casual leave and pay scales of teachers and the staff of the society.

[29] It was further replied that the salaries of the employees of TTWREIS were meted out of the fund received as grants from the State Tribal Welfare Department and Ministry of Tribal Affairs, Government of India under Article 275 (1) of the Constitution of India and State Plan.

[30] Finally, the said communication, in clear terms stated that “As clarified by Tribal Welfare Department, Govt. of Tripura, the employees of the TTWREIS do not bear the status of Government servants as defined under Rule 2(h) of CCS(CCA) Rules. Therefore, the age relaxation for the post of Junior Weaver in WSC upto the age of 40 years for Government servants cannot be applied in the case of employees working in Tripura Tribal Welfare Residential Educational Institutions Society (TTWREIS). Appointment of Sri. Pintu Chowdhury, while working in EMR School, run by TTWREIS, has no legal sanctity.” On bare perusal of the relevant rules and the nature of service of the petitioner under TTWREIS, we are unable to brush aside the opinion and the decision taken thereof by the union-respondents while terminating the service of the petitioner.

[31] Now, the question we have to decide whether the principle of estoppel and waiver shall be applicable in the context of the present case. Firstly, the petitioner misrepresented the fact that his previous employer was a government department. The union-respondents appointed the petitioner on good faith that he was government servant under a government department. Secondly, the respondents promptly stepped in to action to remove the illegalities committed in respect of the appointment of the petitioner in the post of Junior Weaver and ultimately, rectified the mistake with promptitude. In the considered view of this court, if an employee misrepresents a fact that influences the employer’s decision to appoint him the employer has the justified grounds to terminate the service of such employee upon discovering the misrepresentation. In our opinion, the doctrine of estoppel and waiver are not applicable to the context of the present case. The petitioner was appointed against the post of Junior Weaver subject to the condition that he had to furnish proof that he was a government servant. Later on, though he

was appointed on the basis of declaration that he was a government servant but subsequently, it was detected that he was not a government servant for the reason that his previous employer was not a Government Department but it was a society. It is settled proposition of law that appointment made on the basis of false information, or to say it otherwise, appointment order obtained out of misrepresentation of material fact shall legitimately be treated as voidable at the option of the employer, which can be recalled by the employer and in such a case merely because the petitioner-employee has been appointed and continued in service for months or years on the basis of such fraudulently obtained appointment order cannot claim or create equity in his favour or any estoppel against the employer. *A candidate who suppresses vital facts and is illegally appointed cannot rely on estoppel to challenge his termination. So, the principle of estoppel and waiver cannot be applied.*

[emphasis supplied]

[32] We have also taken into consideration the submission of learned senior counsel appearing for the petitioner that he was on lien. This submission of the learned senior counsel cannot have any force of law.

[33] Under FR-9 (13) "lien", is defined as under:-

"F.R. 9. (13) Lien means the title of a Government servant to hold on regular basis, either immediately or on the termination of a period or periods of absence, a post, including a tenure post, to which he has been appointed on regular basis and on which he is not on probation:

Provided that the title to hold a regular post shall be subject to the condition that the juniormost person in the grade will be liable to be reverted to the lower grade if the number of persons so entitled is more than the posts available in that grade."

Here 'post' means a civil post under the Government Department because unless a person holds a civil post he is not a

government servant and lien is applicable only to Government servant.

[34] Again, lien, in context of a case, refers to the temporary release of an employee from their original *i.e.* parent organization to another organization while retaining his original employment status and benefits. Further, when lien is allowed to an employee it is only for a specific period. At the end of lien period such an employee has to return to his original organization. In the case on hand, the nature of appointment of the petitioner was permanent and regular under the union-respondents. So, it would be wrong to say that the service of the petitioner under the Union-respondents was on "lien".

[35] In ***State of Rajasthan & Anr. Vs. S.N. Tiwari & Ors.*** reported in **(2009) 4 SCC 700** the Hon'ble Supreme Court held as follows:

"17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the previous permanent post.

18. This Court in Ramlal Khurana v. State of Punjab [(1989) 4 SCC 99 : 1989 SCC (L&S) 644 : (1984) 11 ATC 841] observed that: (SCC p. 102, para 8)

"8. Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed."

19. The term "lien" comes from the Latin term "ligament" meaning "binding". The meaning of lien in service law is different from other meanings in the context of contract, common law, equity, etc. The lien of a government employee in service law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed. (See Triveni Shankar Saxena v. State of U.P. [1992 Supp (1) SCC 524 : 1992 SCC (L&S) 440 : (1992) 19 ATC 931])"

[36] In *Dr. S. K. Kacker vs. All India Institute of Medical Sciences & Ors.* reported in **(1996) 10 SCC 734**, the Hon'ble Supreme Court held that a Government servant cannot have lien simultaneously on two posts and appointment to a permanent post in another Central Government Department/Office/State Government entails termination of lien in the previous post.

[37] In view of the aforesaid legal position propounded, in the context of the case, the writ petitioner of the present writ petition cannot claim lien for the post he held under the TTWREIS. The appointment of the petitioner under Union-respondents was permanent as he was substantively appointed to the post of Junior Weaver. To say it otherwise, the petitioner had been appointed substantively to a permanent post under the Union-respondents as Junior Weaver. With the appointment to a permanent post substantively under the Union-respondents, the lien of the writ petitioner in the previous post under TTWREIS was automatically terminated. There is no quarrel in the proposition that a Government servant on acquiring a lien on a regular post will cease to hold any lien previously acquired on any other post. Law in this respect does not mandate issuance of formal notice terminating the lien a Government servant acquired for the post he held under the previous employment.

[38] Having discussed the aforesaid factual and legal aspects, we are of the considered view that there is no material in the present writ appeal to interfere with the decision of learned Single Judge. Accordingly, the decision of the learned Single Judge is upheld and consequently, the writ appeal is dismissed being devoid of merit.

[39] While admitting this appeal, as an interim measure, this court vide order dated 10.05.2022 passed in IA 01 of 2022 directed

the appellant to continue working as a Craft Teacher under the respondents No. 7 and 8 till further directions are issued by this court in the present appeal. As a corollary to the dismissal of the instant intra-court appeal, the said interim order stands vacated.

Pending application(s), if any, also stand disposed of.

JUDGE

JUDGE



SUJAY GHOSH

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