

HIGH COURT OF TRIPURA

AGARTALA

WA 111 of 2022

Dr. Basu Maan Daas,
S/O- Mr. Usha Ranjan Das,
R/O- Housing Board Quarters (Type-IV, No.17),
Chanban Road, R.K Pur, Udaipur,
Gomati, Tripura, Pin-799120

---Appellant(s)

Versus

1. The State of Tripura

To be represented by Principal Secretary, Directorate of Higher Education,
Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West
Tripura, Pin-799006.

2. The Director of Higher Education,

Govt. of Tripura, Office Lane, Agartala, West Tripura

3. The Secretary

Department of Finance, Government of Tripura, New Secretariat Complex,
Kunjaban, Agartala, West Tripura, Pin-799010

---Respondent(s)

For the Appellant(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. Samarjit Bhattacharjee, Advocate Mr. Kawsik Nath, Advocate
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For the Respondent(s)	:	Mr. D. Sarma, Addl. G.A.
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Date of hearing &

Delivery of Judgment & Order : 08.02.2024

Whether fit for reporting : Yes

HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA

JUDGMENT & ORDER (ORAL)

This is an intra-court appeal preferred by appellant (here-in-after referred to as writ petitioner) challenging the impugned judgment dated 12.07.2022 passed by learned Single Judge in connection with WP(C) No.320 of 2020.

2. Before we delve into the judgment passed by the learned Single Judge, it would be apposite to narrate the facts as projected in the writ petition which are as under.

FACTS:-

2.1 Admittedly, the appellant was serving as Assistant Professor in Karimganj College, Higher Education Department, Government of Assam. The said college is governed by UGC Rules and Regulations. While the appellant was discharging his duties as Lecturer in the said government college, he responded to an advertisement vide Advt. No.04/2010 (*Annexure 1*, page 35 to the Memo of Appeal) issued by Tripura Public Service Commission, inviting applications from eligible candidates to fill up the post of Assistant Professor, Government (General) Degree Colleges, Education (Higher) Department, Government of Tripura. On verification of his application, the authority concerned issued call letter in favour of the appellant along with other applicants to participate in the selection process. The appellant was selected and accordingly, offer of appointment was issued in his favour vide memorandum dated 04.11.2010 (*Annexure-2*, page 39 to the Memo of Appeal). On submission of technical resignation by the appellant from the post of Assistant Professor, it was accepted by Principal, Karimganj College w.e.f. afternoon of 19.11.2010 for his joining to the post of Assistant Professor in Government Degree (General) College, Education (Higher) Department, Government of Tripura vide Advt. No.04/2010 dt. 01.04.2010 vide communication dated 19.11.2010 (*Annexure 20*, page 95 to the Memo of Appeal). It is further revealed that the petitioner was permanently released from the post of Assistant Professor in the Department of Chemistry,

Karimganj College, w.e.f. afternoon of 20.11.2010 issued by the Principal, Karimganj College(Annexure 5, page 50 of the memo of appeal).

2.2 It is pertinent to mention herein that prior to submission of his application, the appellant had sought for no-objection from his previous employer which was accorded by the said employer vide certificate dated 09.08.2010 (*Annexure 4*, page 49 to the Memo of Appeal).

2.3 The respondent/Education (Higher) Department, Government of Tripura had issued appointment letter in favour of the appellant along with other selected candidates vide notification dated 27.12.2010 (*Annexure 3*, page 41 to the Memo of Appeal) whereby and whereunder all the selected persons including the appellant were directed to report for duties to the Principal/Principal-In-Charge of their respective colleges as indicated therein by 15.02.2011 as Assistant Professor. The appellant reported his joining on 14.02.2011 i.e. one day prior to the last date of joining as indicated in the notification dated 27.12.2010. Since his joining, the appellant has been discharging his duties as Assistant Professor under the Education (Higher) Department, Government of Tripura as Assistant Professor.

2.4 Thenceforth his joining, the appellant had been pursuing his claim for counting his past service, that is, the period he rendered in Karimganj College, Assam in terms of the UGC regulations, 2010 as published in the Gazette of India Part III Sector 4 dated 30.06.2010 (*Annexure 25*, Page 109 to the Memo of Appeal), but it was denied by the respondents.

2.5 Lastly, the appellant has submitted his representation on 06.07.2013 which was also not responded by the respondents. Having failed in

his persuasions, the appellant had approached this Court claiming counting of his past service under Karimganj College, Government of Assam.

2.6 The learned Single Judge after hearing the parties dismissed the claim raised in the writ petition holding that the appellant had not reported his joining on time and there was delay of 85 days to report his joining after his resignation and release on 20.11.2010 by his previous employer. The learned Single Judge accepting the plea of the respondents held that such delay amount to break-in-service forfeiting the period he served under his previous employer. Hence, this intra-court appeal.

3. On the aforesaid background of facts, we have heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee and Mr. Kawsik Nath, learned counsel appearing for the writ petitioner-appellant and Mr. D. Sarma, learned G.A appearing for the respondents-State.

4. Mr. Roy Barman, learned senior counsel appearing on behalf of the appellant has drawn out attention to Rule 26(2) of the CCS (Pension) Rules. Learned senior counsel has also submitted that under Clause 10.0 of the UGC Regulations, 2010, the appellant being a direct recruitee is entitled to get the benefit of counting his past service he rendered in Karimganj College, Higher Education Department, Government of Assam. It is further submitted that since the appellant had reported his joining within the time stipulated in the appointment letter, it would be wrong to say that there was break-in-service on the pretext that the appellant has joined his service after 85 days of his release by the previous employer. Learned senior counsel has urged to set aside the findings arrived at by learned Single Judge allowing the claim of the writ appellant as aforestated.

5. Opposing the submissions of learned senior counsel for the appellant, Mr. Sarma, learned Addl. G.A has submitted that the appellant had submitted his resignation prior to issuance of the appointment letter in favour of him which created cloud in the minds of the respondents as to how he came to know that he would be appointed under the respondents. Second fold of submission advanced by learned Addl. G.A is that the writ petitioner/appellant did not forward his application through proper channel and thus, he violated Clause 10.1(c) of UGC Regulations, 2010.

6. Learned Addl. G.A relying upon Sub-Rule (1) of Rule 26 of CCS(Pension) Rules submits that due to delayed reporting by 85 days, the past service of the appellant is forfeited and this delay of 85 days should be treated as break-in-service disentitling him from counting his past service he rendered in Karimganj College under the Higher Education Department, Government of Assam. Lastly, learned Addl. G.A has further defended the finding and conclusion arrived at by learned Single Judge while dismissing the writ petition.

7. We have considered the rival submissions advanced by learned counsel appearing for the parties.

8. Before entering into the merits of the arguments advanced by learned counsel appearing for the parties, we deem it fit to reproduce the conclusion arrived at by the learned Single Judge at Para 29 of the said judgment:-

“29. If the prayer of the petitioner is considered by this court and the said delay of 85 days is condoned, there is no yardstick as to what extent this court in Article 226 of the Constitution of India can exercise for purpose of condoning that

delay when the statute specifically empowers the Page 14 of 14 concerned authority for condoning, the High Court cannot enter into the shoes of the concerned authority and condone the delay. Though the petitioner has joined the service in time, the continuity has not been extended and there is breakage in service and thus, this court finds sufficient force in the submission of Mr. Sharma, learned Addl. G.A. appearing for the respondents.”

9. According to us, the correctness of the above finding of the learned Single Judge has to be examined in line as per the provisions mentioned in Rule 26 of the CCS(Pension) Rules and the Rules governing counting of past service enumerated in the *University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010* (for short, “UGC Regulations, 2010”). There is no quarrel that UGC Regulations, 2010 has a statutory force in exercise of the power conferred under clause (e) and (g) of Sub-Section(1) of Section 26 of University Grants Commission Act, 1956(for short, “UGC Act”), and in pursuance of the MHRD O.M. No.F.23-7-2008-IFD dated 23rd October, 2008, read with Ministry of Finance (Department of Expenditure) O.M. No.F.1-1/2008-IC dated 30th August, 2008. UGC Act is enacted under the provisions of *Entry 66 of List-I of Seventh Schedule* of the Constitution. Clause 1.2 of Regulation 1 of UGC Regulations, 2010 contemplates that it will *apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or a affiliated college recognized by the Commission, in consultation with the university concerned under Clause (f) of Section 2 of the UGC Act, and every institution deemed to be a university under Section 3*

of the said Act. Admittedly, Tripura University is governed by University Grants Commission Act and all rules and regulations framed under the UGC Act are applicable to Tripura University. So, for violation or for enforcement and proper implementation of the provisions of the UGC Act and Rules and Regulations thereof, this Court can invoke its power of issuance of writ as provided under Article 226 of the Constitution of India.

10. In addition, what is stated here-in-above, it is settled proposition of law that the writ court in exercise of its extra-ordinary and discretionary jurisdiction will issue appropriate writ in case the fundamental right is infringed. High Courts' writ jurisdiction is extensive and expansive. According to Article 226 of the Constitution of India, High Courts can issue writ for "**any other**" purpose, in addition to protecting fundamental rights. Therefore, it is not necessary that the breach is of a fundamental or constitutional right to invoke a writ petition under Article 226. For issuance of a writ, any action or harm caused by the State or its instrumentalities or by any statutory authority in violation of ordinary public law would be sufficient.

11. Again, if any action of the statutory or executive authority is found to be arbitrary, discriminatory and result capricious exercise of administrative power and offends Articles 14 and 16 of the Constitution of India, then the writ courts must come into the shoes of such authority to remove or cure such illegalities or discrimination to set the law in its right perspective and direction.

12. Counting of past service in an appropriate case is one of such statutory rights which an employee is entitled to get in an appropriate case. Non-granting of such benefits in appropriate case is unreasonable and arbitrary

and thus offends Article 14 and Article 16 of the Constitution of India. Keeping in mind the aforesaid principle, we have proceeded to decide the claim raised in his writ petition.

13. At the outset, it would be gainful to reproduce Clause 10.0 of UGC Regulations, 2010 which is under:-

10.0 COUNTING OF PAST SERVICE FOR DIRECTOR RECRUITMENT AND PROMOTION UNDER CAS

10.1. *Previous regular service whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional Organizations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR, DBT, etc., should be counted for direct recruitment and promotion under CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature these posts are described as per Appendix III- Table No.II provided that:*

- (a) The essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor as the case may be.*
- (b) The post is/was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer) Associate Professor (Reader) and Professor.*
- (c) The candidate for direct recruitment has applied through proper channel only.*
- (d) The concerned Assistant Professor, Associate Professor and Professor should possess the same minimum qualifications as prescribed by the UGC for appointment to the post of Assistant Professor, Associate Professor and Professor, as the case may be.*
- (e) The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of University/State Government/Central Government/Concerned Institutions, for such appointments.*

(f) The previous appointment was not as guest lecturer for any duration, or an ad hoc or in a leave vacancy of less than one-year duration. Ad hoc or Temporary service of more than one year duration can be counted provided that:

(i) the period of service was of more than one year duration;

(ii) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and

(iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break.

(g) No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government), was considered for counting past services under this clause.”

14. On perusal of sub-clause (10.1) of 10.0 of UGC Regulations, 2010, it is clear that if the service of an Assistant Professor or Associate Professor or Professor or equivalent in a University, College, etc., is governed by UGC Regulations, then, such Assistant Professor, Associate Professor or equivalent thereof will be entitled for counting his past service on his joining to such equivalent post under a different Government/ organisation which is governed by UGC. In the instant case, admittedly the petitioner was serving under the Karimganj College, Assam as Assistant Professor on regular basis and his service conditions is governed by the UGC Regulations, 2010. From the records it is evident that the petitioner had applied for the post of Assistant Professor under the Government of Tripura through proper channel. That apart, Clause 10.1(g) categorically stipulates that there should not be any distinction to be made with reference to the nature of management of the institution where previous service was rendered (private/local

body/government) for the purpose of consideration of counting past service. At the cost of repetition, in the instant case, the petitioner had rendered his service as Assistant Professor under concerned education department of the Govt. of Assam.

15. Next, it is necessary to reproduce Rule 26 of CCS(Pension) Rules which deals with forfeiture of service on resignation. Rule 26 is reproduced here-in-below:-

“26. Forfeiture of service on resignation

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

*(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :- * * * * **

16. On minute reading of Rule 26 of CCS(Pension) Rules which deals with forfeiture of past service on resignation, it is clear that the case of the appellant does not fall under Sub-Rule (1) of Rule 26 of CCS(Pension) Rules. The case of the appellant is covered by Sub-Rule(2) and (3) of Rule 26 of the

CCS(Pension) Rules. Admittedly, the appellant submitted his technical resignation as provided under Sub-Rule(2) of Rule 26 of the CCS(Pension) Rules. Sub-rule (3) envisages the intervening period between the date of his release by his previous employer and the date of his joining under the new employer, and the said period can be regularized by granting leave due to such employee provided that such employee is to report his joining under the new employer within the period not exceeding the joining time permissible under the Rules.

17. In the instant case, the writ appellant had reported his joining within the stipulated date mentioned in the appointment letter itself issued in his favour by the respondents. It transpires that the appellant was released by his previous employer, that is, Karimganj College, Assam on 20.11.2010. In the appointment letter, the respondents had mentioned last date of joining as 15.02.2011. The appellant reported his joining on 14.02.2011, i.e. one day prior to the last date of joining. So, there is no violation of sub-rule (3) of Rule 26 of the CCS (Pension) Rules *vis-à-vis* the time schedule mentioned in the appointment letter issued by the respondents in favour of the appellant. As such, this period may be regularized by granting leave due to the appellant and it is condonable as contemplated under sub-rules (2) and (3) of Rule 26 of CCS (Pension) Rules.

18. Now dealing with the submission of learned Addl. G.A that the appellant did not apply through proper channel as provided under Clause (c) of the sub-clause (10.1) of 10.0 of UGC Regulations, 2010, it is noticed that appellant had sought for permission, and in response thereto, the Principal, Karimganj College issued no-objection certificate on 09.08.2010 stating inter

alia that the authority has no-objection if the appellant joins Govt. Degree College, Education (Higher) Department, Govt. of Tripura. It is further stated that the appellant would be released permanently for the same. So, the plea agitated by learned Addl. GA in this respect is without any foundation, and is accordingly repelled being contrary to records.

19. Dealing with the second submission advanced by learned Addl. G.A that the appellant submitted his resignation prior to the issuance of appointment letter, and that as to how it was within his knowledge that he would be appointed under the Government of Tripura, we find that the respondents had issued offer of appointment in favour of the appellant vide memorandum dated 04.11.2010. After receipt of the said memorandum issuing offer of appointment, the appellant had submitted his technical resignation on 19.11.2010, which appears from the communication dated 19.11.2010 itself issued by the Principal, Karimganj College (Annexure 20, page 95 to the memo of appeal). So, this submission of learned Addl. G.A is also contrary to the records and accordingly, this submission is repelled.

20. Now, coming to the main issue whether there was 85 days delay to report to his joining in the Govt. Degree College, Dharmangar, Tripura in respect to the petitioner/appellant. We reiterate that the appellant reported his joining one day prior to the last date of joining mentioned in the appointment letter. The appellant was released by his previous employer on 20.11.2010. The petitioner in his writ petition had explained that he could not join prior to 14.02.2011 because of the illness and death of his mother. According to us, though the explanation was given in the petition, but the same was not a necessity, since the appellant reported his joining within the date stipulated in

the memorandum of appointment dated 04.11.2010, which the respondents failed to appreciate and according to us, the concerned respondents had misconstrued and misunderstood Rule 26 of the CCS (Pension) Rules; and this is the area where the court must step into the shoes of the respondents to get the illegality cured and the defect rectified in exercise of its extraordinary and discretionary power under Article 226 of the Constitution of India.

21. In view of the discussion made so far, we respectfully disagree with the view taken by learned Single Judge that “there is break in service” and that the decision of the respondents disentitling the benefit of counting his past service rendered under the previous employer is immune from interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

22. For the reasons stated and discussed here-in-above, the present writ appeal stands allowed. The judgment and order dated 12.07.2022 passed in WP(C) No.320 of 2020 by learned Single Judge stands set aside and quashed.

23. Accordingly, we direct the respondents to count the past service rendered by the appellant/petitioner in Karimganj College under Government of Assam and reconstruct the service book accordingly.

The entire process shall be completed within a period of 3(three) months.

JUDGE

JUDGE

Rohit

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