

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 607 of 2023

Dibyendu Chakraborty, son of late Dwijendra Chakraborty, resident of Town Gobindapur, PO & PS- Kailashahar, District- Unakoti Tripura.

..... **Petitioner(s)**

Versus

1. The State of Tripura, represented by the Commissioner & Secretary to the Rural Development Department, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex. Sub-Division- Sadar, District- West Tripura.

2. The Director (Projects), State Level Monitoring Cell of SGSY, Rural Development Department, Government of Tripura, Agartala, District- West Tripura.

3. The Chief Executive Officer, Office of the District Magistrate & Collector, Unakoti Tripura, District Rural Development Agency, Kailashahar. District- Unakoti Tripura.

4. The Project Director (Additional District Magistrate & Collector, Unakoti Tripura). District Rural Development Agency, Kailashahar, District- Unakoti Tripura.

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

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. Samarjit Bhattacharjee, Advocate. Mr. Koomar Chakraborty, Advocate. Mr. Dipjyoti Paul, Advocate
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A.
Date of hearing	:	08.04.2024.
Date of pronouncement of Judgment and order	:	09.04.2024
Whether fit for reporting:	:	NO.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. M. Debbarma, learned Addl. G.A. representing the State respondents.

[2] The present writ petition has been filed under Article 226 and Article 14 of the Constitution of India for issuance of a writ of mandamus and/or in the nature thereof, for directing the respondents to revoke/rescind the impugned order dated 27.07.2023 extending other benefits as sought for in this writ petition.

[3] The case of the petitioner in brief is that after retiring from Armed Forces, the Petitioner joined the post of Accounts Officer, in the District Rural Development Agency (DRDA for short), North Tripura on 10.09.2001. Thereafter, by a memo dated 11.03.2002, issued by the Chief Executive Officer (District Magistrate & Collector), DRDA, North Tripura, the salary of the Petitioner was revised and fixed from Rs.6,000/- to Rs.7,000/- per month, with effect from 01.03.2002. It is contended in the writ petition that prior to completion of one year of service of the petitioner, the Chief Executive Officer (District Magistrate & Collector), DRDA, North Tripura issued a Memo dated 18.06.2002, thereby extending the tenure of service of the petitioner for a period of two years with effect from 10.09.2002 to 09.09.2004, and his salary was revised and fixed from Rs.7,000/- to Rs.7,500/- per month, with effect

from 01.09.2002. In the meantime, the petitioner was called for an interview for the regular post of Accountant, in the Rajya Sainik Board, Government of Tripura, Agartala to be held on 21.11.2002 as per direction of the Army Placement Cell, Office of the Director General of Resettlement, Government of India, New Delhi and it is submitted that the petitioner appeared at the said interview for selection to the regular post of Accountant, in the Rajya Sainik Board whereat, he emerged out successful and stood first in the merit list.

[4] Thereafter, the petitioner submitted a letter dated 25.11.2002 to the Chief Executive Officer (District Magistrate & Collector) DRDA, North Tripura, thereby requesting him for issuance of 'No Objection Certificate', in favour of the petitioner to enable him to join the post of Accountant, in Rajya Sainik Board, Government of Tripura. It is submitted that before expressing any opinion or decision with regard to the prayer of the petitioner for issuance of 'No Objection Certificate', with the approval of the Chairman, DRDA, the Chief Executive Officer (District Magistrate & Collector), DRDA, North Tripura issued a memo dated 18.12.2002, by which regular pay scale was sanctioned to the Petitioner. For the purpose of reference, the relevant contents of the said memorandum dated 18.12.2002 (placed at Annexure-10 to the writ petition) is extracted herein-below:

"GOVERNMENT OF TRIPURA
DISTRICT RURAL DEVELOPMENT AGENCY
NORTH TRIPURA : KAILASHAHAR

No. 4758-59/F.15(9/B)-RD/1998-99

Dated 18th December 2002.

M E M O

Shri Dibyendu Chakraborty, currently working in this Agency as Accounts Officer on contract basis with consolidated salary of Rs.7500/-(Rupees Seven thousand five hundred) only per month is here by allowed to draw his salary in the scale of Rs,7,450-13,000/- with immediate effect for the period of contract.

This is issued with the approval of Chairman, DRDA and in partial modification of Memo. No.F.15(9/B)/RD/98-99/955-56 dated 18.6.2002,

(R.K. De Choudhury)

Sd/-

Chief Executive Officer
District Rural Development Agency
North Tripura: Kailashahar"

[5] It is further submitted that only after the issuance of the above mentioned memorandum, negating the prayer of the petitioner regarding grant of No Objection, the Chief Executive Officer (District Magistrate & Collector), DRDA, North Tripura issued a letter dated 27.12.2002, thereby intimating the Secretary, Rajya Sainik Board, Government of Tripura that DRDA was not in a position to spare the services of the petitioner, at that juncture. After completion of 10 years of service, on 01.10.2011, the Petitioner was granted the benefit of ACP-I. On 20.08.2013, the Respondents indicated the name of the petitioner under the section of DRDA Borne Employees (Regular). It is contended that on various occasions, the post of the petitioner was reflected as he was holding the regular posts. On 03.02.2016, the respondents agitated that the post held by the Petitioner is regular and thereafter on 11.07.2018, the respondents stated that the post held by the Petitioner is a Permanent post (and not Contractual).

[6] On 12.09.2019, the Petitioner was granted the benefit of MACP-11 (w.e.f. the date of completion of 17 years of service). Thereafter, on 20.03.2021, the Project Director, DRDA communicated that retirement benefits, amounting to Rs.19,47,600/- (under the heads

of Gratuity & Leave Encashment) is to be released, in favour of the Petitioner. On 31.12.2021, the Petitioner proceeded to retirement. Subsequently, on 15.01.2022, the Petitioner submitted representation, requesting for releasing his post retiral benefits etc. but, as the same was not granted to the petitioner, he had earlier filed a writ petition [WP(C) No.197 of 2022) before this Court, and this Court by an order dated 16.05.2023, directed the respondents to consider the case of the Petitioner. Thereupon, the respondents issued the impugned Order dated 27.07.2023, regretting the claims of the Petitioner. The said impugned order issued by the respondents is quoted herein below:

"Government of Tripura
Rural Development Department
Secretariat New Capital Complex
Agartala; West Tripura

No.F.2(24)-RD/SGSY/Part/2022/219-21

Dated. Agartala, the 27th July, 2023

ORDER

WHEREAS, Sri Dibyendu Chakraborty, Ex- Accounts Officer, DRDA, Unakoti has filed a case before of the Hon'ble High Court of Tripura vide case no. W.P(C) 197 of 2022 seeking justice for (i) release the retirement benefit of the petition such as gratuity and leave encashment benefit with interest and (ii) to release the salary of the petitioner for the period of July, 2021 to December, 2021 along with the enhancement of periodical increment which was due as on 01.07.2021 and also (iii) to release the arrears of pay from October, 2018 to May, 2020 as per revision of pay vide TCS (1st Amendment) Rules 2018;

AND

WHEREAS, The Hon'ble High Court of Tripura case No. WP(C) 197 of 2022 passed an Order which was disposed of on 16.05.2023 with the direction that the case of the Petitioner to considered in accordance with the law within a period of 2 (two) months from the date of receipt of copy of the order;

AND

WHEREAS, the Hon'ble High Court of Tripura passed order dated 16.05.2023 of the writ petition case No. WP(C) 197 of 2022 and the petitioner have eventually submitted a representation on 07.06.2023. On examination of the available records of the petitioners the following points transpire;

Sri Dibyendu Chakraborty. Ex Accounts Officer of DRDA Unakoti was engaged on contractual basis with filling up vacant post of DRDAs with Advertisement vide Notification No. F.15 (9)/B/RD/98-99/663 dated 27-06-2000 where the post of the Accounts Officer was purely on contract basis as per the Memo no.

F.15(9/B)/RD/1998-99/1407-1409, dated 6.09.2001 in DRDA, Unakoti District. The following terms and conditions were attached to his contractual engagement;

(i) The appointment is made on contract basis for one year and purely temporary basis.

(ii) The period of contract may be extended from time to time if required by this Agency.

(ii) The appointee shall not have any right for permanent absorption in the post of Accounts Officer;

AND

WHEREAS, Sri Dibyendu Chakraborty, Ex-Accounts Officer of DRDA Unakoti was discharging his duties as purely contractual employee with the contract period valid upto 05.12.2019. But, it has come to the notice of DRDA, Unakoti that Sri Chakraborty have been drawing monthly remuneration up to the month of June, 2021 i.e. excess monthly remuneration drawn for 18 monthly 27 days. As the services of Sri Chakraborty has not been rendered by the Unakoti, DRDA for the period of July, 2021 to December, 2021, the tour cum working report submitted by Sri Chakraborty for the same period has not been accepted by the Project Director, DRDA, Unakoti;

AND

WHEREAS, The Department has notified the "District Rural Development Employee Death Cum Retirement and Leave Encashment Regulations of Tripura, 2014" vide No.F.I(154)-RD- SGSY/88/3485-3529 dated 07.11.2014 for extending the benefit of Death Cum Retirement and Leave Encashment only to the DRDA regular employee on the basis of central and state share in the ratio of 90:10, subject to the availability of fund;

AND

WHEREAS, Sri Chakraborty, Ex Account Officer, DRDA was appointed as a purely contractual employee as mentioned aforesaid and the period of contract was expired on 05/12/2019, the benefit of revision of pay vide TCS (1st Amendment) Rules, 2018 is only applicable to the regular employees of DRDA, subject to the availability of fund and the same has not been extended to the contractual staff;

AND

WHEREAS, There was no order of regularization or absorption of Sri Chakraborty to the sanctioned post of accounts Officer, DRDA, Unakoti under the approval of the Government/ competent authority;

AND

WHEREAS, Sri Chakraborty, Ex Account Officer, DRDA, Unakoti, is a contractual employee demanded to release the retirement benefit of the petitioner such as gratuity and leave encashment benefit with interest and to release the arrears of pay as per revision of pay vide TCS (1st Amendment) Rules, 2018 but it has not enumerated in the terms & condition of the contract of Sri Chakraborty to entitling him such benefits;

NOW, THEREFORE, The demands i.e. (i) To release the retirement benefit of the petitioner such as gratuity and leave encashment benefit with interest and (ii) To release the salary of the petitioner for the period of July, 2021 to December, 2021 along with the enhancement of periodical increment which was due as on 01.07.2021 and also (iii) To release the arrears of pay from October, 2018 to May, 2020 as per revision of pay vide TCS (1st Amendment) Rules, 2018 of Sri Chakraborty is not considered as because of the nature of service as well as terms and conditions specified during engagement on contractual basis does not conform for granting the benefit as demanded. Therefore, the petition of Sri Chakraborty is hereby regretted/rejected.

Sd/-
(Dr. Sandeep R. Rathod, IAS)
Secretary to the Government of
Tripura"

[7] Aggrieved by the above-quoted impugned order dated 27.07.23, the petitioner has preferred this present writ petition seeking following reliefs:

"(i) 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, to revoke/rescind the impugned Order dated 27.07.2023 (Annexure-38 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, to make payment of Gratuity @ Rs.10,00,000/- and Leave Encashment @ Rs.9,47,600/-, totaling to Rs.19,47,600/-, along with Interest thereon (due to belated payment thereof), in favour of the Petitioner;

(iii) 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, to make payment of the arrears of pay, from October, 2018 to May, 2020, as per revision of pay made vide Tripura State Civil Services (1st Amendment) Rules, 2018, in favour of the Petitioner;

(iv) 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, to make payment of the outstanding salary, for the period, from July, 2021 to December, 2021, along with the enhancement of periodical increment, which fell due as on 01.07.2021, but has not been released, though the Petitioner served for the said period;

(v) 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, to upload/record the date of retirement/release of the Petitioner from DRDA, Unakoti Tripura (i.e., 31.12.2021), in the EPF portal, so as to enable the Petitioner to receive the Employees' Provident Fund (EPF), as well as the EPF pension (as admissible);

(vi) Call for the records, appertaining to this Writ Petition;

(vii) After hearing the parties, be pleased to make the Rule absolute in terms of (i) to (iv) above;

(viii) Costs of and incidental to this proceeding....."

[8] Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel appearing for the petitioner submits that with the approval of the Chairman, DRDA, vide Memo dated 18.12.2002, the Chief Executive Officer (District Magistrate & Collector),

DRDA, North Tripura sanctioned the regular scale of pay of Accounts Officer in favour of the petitioner. Now, the respondents cannot deny to extend the post retire benefits to the petitioner. To support his contention, learned counsel placed reliance on the following judgments of this Court, wherein the petitioner/appellant were extended the benefits as sought for in the petition/appeal:

1. Judgment dated **09.02.2024** passed in **WP(C) 609 of 2023** of this Court.

2. Judgment dated **06.03.2024** passed in **WA No.180 of 2022** by the Division Bench of this High Court.

[9] He further submits that no regular monthly pension is admissible to the petitioner as DRDA has not introduced regular monthly pension to its employees. After retirement, Gratuity & Leave Encashment benefits are substantive benefits which are admissible to the petitioner. It is contended that the petitioner is not able to draw his Employees' Provident Fund (EPF for short) as well as the EPF pension (as admissible) due to non-recording of the retirement/release date of the petitioner by his employer in the EPF portal. Mr. Roy Barman, therefore, urges this Court to set aside the impugned proceedings dated 27.07.2023 allowing this writ petition with all the reliefs as sought for.

[10] On the other hand, Mr. M. Debbarma, learned Addl. G.A. opposes the contention raised by learned senior counsel for the petitioner submitting that a communication dated 17th March, 2022 was made between the Chief Executive Officer (District Magistrate & Collector), DRDA, Unakoti District, Kailashahar and the Director (Projects), SLMC, RD Department, Government of Tripura as it is presumed that the

petitioner might have manipulated the records when he was holding the responsible post of Accounts Officer in DRDA and the nature of contractual appointment of the petitioner was shown as regular employee by misleading the authority. He further submits that the matter was not brought to the notice of this Court on earlier occasion in case No. WP(C) 197 of 2022. Learned Addl. G.A., therefore, urges this Court to dismiss the present writ petition.

[11] As discussed earlier, learned counsel for the petitioner placed reliance on the judgment of this Court in WP(C) 609 of 2023 and also the judgment in WA No.180 of 2022 by the Division Bench of this High Court, where the petitioner/appellant were extended the benefits as sought for in the petition/appeal. But, here the case is different, as it is seen from the record that as per the arguments of the learned Addl. G.A., some mischief has taken place and they presumed that it could be at the level of petitioner since he was holding a responsible post of Accounts Officer and most of the proceedings went unnoticed which now create adverse impression to the case of the petitioner. It is also noticed that the communication dated 17th March, 2022 between the Chief Executive Officer (District Magistrate & Collector), DRDA, Unakoti District, Kailashahar and the Director (Projects), SLMC, RD Department, Government of Tripura is relevant to the case, and for ready reference, the same may be extracted as under:

"Government of Tripura
State Level Monitoring Cell of SGSY
Rural Development Department

No. F.11(40)-RD/SGSY/Part/2016/266-69

Dated, Agartala, the 17th March, 2022

To
The Executive Officer

(District Magistrate & Collector)
District Rural Development Agency
Unakoti District, Kailashahar.

Subject:- Request to enquire into the irregularity in handing of pay matters, Grant of pay scale, ACP etc in respect of Sin Dibendu Chakraborty, AO, DRDA, Unakoti District- regarding.

Sir

I am to refer to your letter No. F 15 (40)/RD/(D)/2003/3056-57 dated 20.01.2022 and to state that matter was referred to the Finance Department and the Finance Department has sought below mentioned queries-

"The Finance Department has examined the records, as made available in the concerned Department's file. It is apparent from those records that there has been gross irregularity in handling the pay matters of the concerned person. Grant of pay scale, ACP etc, was without any authority of RD Department or Finance Department. It also appears from those records that the person concerned was ex-Army personnel who was engaged on contract basis under DRDA, allowed regular pay scale subsequently and retired from service under DRDA on 05-12 2019. No records are available in the Department records to indicate whether any action has been taken against the person(s) involved in those irregularities".

2. "In such circumstance, the Department concerned is requested to enquire the matter at their own level"

3. The Original Service Book of Sri Chakraborty is enclosed herewith.

In view of the above, you are kindly requested to enquire the matter and submit factual report to this office immediately.

MATTER MOST URGENT

Yours faithfully,

Sd/-
(Dr. T.K. Debnath, IAS)
Director (Projects)
SLMC, RD Department
Government of Tripura"

[12] It is seen from the above communication that there is a *prima facie* opinion of the respondents that the records were manipulated and accordingly, an enquiry is to be conducted. The said letter dated 17th March, 2022 is not discussed in the impugned proceeding dated 27.07.2023 and the same is not reflected in the counter affidavit filed by the respondents in the earlier case being WP(C) 197 of 2022. This has become a crucial document to know as to how the name of the petitioner is reflected in the service record as a regular employee in the absence of any regularization order or proceedings.

[13] These lapses on the part of the respondents are observed by this Court and this Court has no hesitation to say that the

administration in the respondent department have to be handled more diligently.

[14] The judgments referred by the petitioner-counsel are not applicable in the present case.

[15] Thus, it becomes very necessary to go to the grass-root level of the case. This Court feels that ends of justice would be met, if the matter be enquired into in terms of the letter dated 17.03.2022 and to render justice to the petitioner in the event if he is regular employee and if he is entitled to his benefits in accordance with law.

[16] For the discussion made above, this Court directs the respondents to complete the enquiry in terms of the letter dated 17th March, 2022 if not already completed, as expeditiously as possible and to take a decision by reviewing the matter in its entirety and to communicate the said decision to the petitioner. As a result, the proceeding dated 27.07.2023 become inoperative.

[17] In view of the above directions/observations, the matter is remanded back to the respondents and accordingly, this writ petition stands disposed of.

As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

JUDGE

Sabyasachi G.

**SABYASACHI
GHOSH**

Digitally signed by SABYASACHI
GHOSH
Date: 2024.04.10 16:28:37 +05'30'