

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 609 of 2023

Debashish Datta Roy,
son of late Dinesh Chandra Datta Roy,
resident of Boulapasha, Mother Teresa Sarani,
P.O. & P.S. Kailashahar, District- Unakoti Tripura,
Age- 61 years.

..... Petitioner(s)

Versus

- 1. The State of Tripura**
To be represented by the Principal Secretary,
Department of Finance, Government of Tripura,
New Secretariat Building, New Capital Complex,
Kunjaban, P.S. New Capital Complex, Agartala,
West Tripura, PIN- 799010.
- 2. The Secretary,**
Department of Panchayet, Government of Tripura,
New Secretariat Building, New Capital Complex,
Kunjaban, P.S. New Capital Complex, Agartala,
West Tripura, PIN-799010.
- 3. The Director,**
office of the Directorate of Panchayats,
Government of Tripura, Pandit Nehru Complex,
Gurkhabasti, P.O. Kunjaban, West Tripura,
PIN- 799006.
- 4. The Block Development Officer,**
Kumarghat RD Block, Government of Tripura,
Unakoti District, Tripura,
- 5. The Accountant General (A & E),**
Tripura, Agartala, P.O. Kunjaban, West Tripura,
PIN- 799006.

..... Respondent(s)

For Petitioner(s)	:	Mr. Samarjit Bhattacharjee, Advocate Ms. A. Debbarma, Advocate Mr. Dipjyoti Paul, Advocate
For Respondent(s)	:	Mr. B. Majumder, Dy. SGI Mr. M. Debbarma, Addl. G.A.
Date of hearing	:	08.02.2024.
Date of pronouncement of Judgment and order	:	09.02.2024
Whether fit for reporting:	:	YES.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order

Heard Mr. Samarjit Bhattacharjee, learned counsel appearing for the petitioner. Also heard Mr. B. Majumder, learned Dy. SGI for the respondent Union of India and 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 quashing and cancelling the impugned memorandum dated, 23.08.2023 issued by the Directorate of Panchayet, Government of Tripura in consequence thereto directing the respondents to sanction and release regular monthly pension under CCS (Pension) Rules, 1972 alongwith other benefits.

[3] The case of the petitioner in brief is that the petitioner joined service on 15.09.1989 by submitting joining report to the BDO, Kumarghat RD Block, North Tripura District, respondent No.4 temporarily as Panchayat Extension Officer on ad-hoc basis and on attaining superannuation, retired on 28.02.2022.

[4] The Deputy Secretary to the Government of Tripura, GA (P&T) Department, vide memo, dated 28.04.2003 communicated to all concerned, the decision, taken by the Government that all ad-hoc appointees were required to be regularized within 31.07.2003 positively. All Heads of Departments were asked to take necessary steps in this regard immediately, so that, ad-hoc appointment under the concerned Department might be regularized within the time frame. Thereafter, BDO, Kumarghat RD Block, vide letter dated 12.06.2003, communicated to the

Director of Panchayet, Government of Tripura i.e. respondent No.3 seeking necessary action on the part of Director of Panchayet for regularization of service of the petitioner in terms of the memo dated, 28.04.2003. The petitioner by his applications dated, 17.03.2010, 07.11.2011 & 21.09.2012 appealed to the Director of Panchayet for regularization of his service stating that since his appointment as PEO on ad-hoc basis in the year 1989, he has completed 21 years service to the satisfaction of his authority. The petitioner was allowed benefit of revised pay structure under ROP Rules, 2015.

[5] The petitioner by representations dated 20.06.2018, 17.12.2019 approached to the respondent(s) through proper channel for regularization of his service and allowing him the benefit of gradation on completion of 10 years, 17 years & 25 years of continuous and satisfactory service in the same grade without promotion. The representations of the petitioner were forwarded by the BDO, Kumarghat RD Block to the concerned respondent vide forwarding letter dated, 21.12.2019. Finally, he was released from service w.e.f. 28.02.2022 on attaining the age of superannuation.

[6] The petitioner by his representation dated, 06.06.2022, approached the BDO, Kumarghat RD Block, respondent no.3 herein seeking pensionary benefits treating him as a regular employee but, the respondents did not consider the same. Thus, he approached this Court on earlier occasion by filing WP(C) 570 of 2022 and the same was disposed of directing the respondents to consider the representation made by the petitioner in accordance with law. The relevant portion of

the order dated 16.05.2023 passed by this Court in WP (C) 570 of 2022 is quoted herein-under:

".....3. It is seen from the record that vide representation dated 06.06.2022, the petitioner has ventilated his grievance before the respondents but the same is still pending till today. In view of the same, without expressing any opinion on its merit, this present writ petition is disposed of with a direction upon the respondents to consider the representation dated 06.06.2022 submitted by the petitioner herein in accordance with law. This exercise shall be completed within a period of 3(three) months from the date of receipt of the copy of this order.

4. With the above observation and direction, this present writ petition stands disposed of. Stay if any stands vacated. Pending application(s), if any also stands closed."

[7] In pursuance of the said order dated 16.05.2023 passed by this Court, the respondents passed the impugned memorandum dated 23.08.2023 rejecting the request of the petitioner for releasing his pensionary benefits treating him as a regular employee. The representation of the petitioner dated 06.06.2022 was rejected on the ground that his services were not regularized and accordingly, he is not entitled to any relief he sought for and the said memorandum dated 23.08.2023 was communicated to the petitioner.

[8] Aggrieved by the said memorandum dated 23.08.2023, the petitioner has preferred the present writ petition. The State respondents (Respondents No. 1 to 4). and the respondent No.5 [the Accountant General (A & E), Tripura, Agartala] have filed their respective counter affidavits and also submitted documents in support of their case.

[9] Mr. Samarjit Bhattacharjee, learned counsel appearing for the petitioner has contended that the petitioner was appointed on 15.09.1989 temporarily on ad-hoc basis and thereafter, the petitioner was treated as a regular employee and as per memo dated 16.04.1992, issued by the Director of Panchayet, Tentative Seniority List of Panchayet

Extension Officer as on 31.03.1992 was published, wherein, the name of the petitioner figured at serial number-38. The petitioner was also given the benefit of revised pay in terms of ROP Rules, 2009 and thereafter, revised structure under ROP Rules, 2015. During his service, a disciplinary proceeding was contemplated and under Sub-Rule (1) of Rule 10 of the CCS (CCA) Rules, 1965 he was suspended and disciplinary action was initiated under Rule 16 of CCS (CCA) Rules, 1965. Thereafter, the suspension order passed by the respondent was revoked with a warning to the petitioner. Learned counsel has prayed for release of pensionary benefits of the petitioner treating him as a regular employee and placed reliance upon the following judgments of the Hon'ble Supreme Court:

(i) Rudra Kumar Sain and others v. Union of India and others reported in **(2000) 8 SCC 25.**

(ii) K. Anbazhagan and another v. Registrar General, High Court of Madras and another reported in **(2018) 9 SCC 293.**

[10] Mr. Bhattacharjee, learned counsel for the petitioner further submits that petitioner has served for more than 30 years with the respondent department and as per the order of the Hon'ble Supreme Court in **case No. Special Leave to Appeal (C) No.1109/2022 (The State of Gujarat & others v. Talsibhai Dhanjibhai Patel)**, an employee who has retired after rendering service for more than 30 years, is entitled to all pensionary benefits. He, therefore, urges this Court to consider the case of the petitioner in the light of the said order of the Hon'ble Supreme Court and to allow the present writ petition setting

aside the impugned memorandum dated 23.08.2023 passed by the respondent.

[11] Mr. M. Debbarma, learned Addl. G.A. representing the State has argued that the petitioner is not entitled for any benefit as sought for in the writ petition and prayed to dismiss the same. He has further contended that the services of the petitioner was only on ad-hoc on temporary basis and he was not regularized. Since the petitioner was working for a long period with the other employees in the respondent department and if without having any proper information about the seniority, any monetary benefits were extended to the petitioner, it is not open for the petitioner to take advantage of the same. Learned Addl. G.A. has placed reliance upon the Notification dated 5th March, 1980 passed by the Government of Tripura in its Appointment & Services Department, Civil Secretariat in Clause 3 of the same and contended that the petitioner unless regularized cannot be entitled for any pensionary benefits since he is not a regular employee.

[12] Mr. B. Majumder, learned Dy. SGI appearing for the respondent No.5 has also contended that unless the petitioner is regularized, he is not entitled for pensionary benefits as per Rule 13 & 14 of the CCS Pension Rules. He has further submitted that the State respondent is the employer and in the event, if State respondents forward papers, they would only act accordingly and they have no reservation to release or to deny the pensionary benefits to the petitioner as it is in the domain of the State.

[13] Heard learned counsel for the respective parties. Perused the record.

[14] Admittedly, it is seen from the record that the petitioner was in service from 15.09.1989 to 28.02.2022 and he made several representations directly and also through proper channel and thereafter, seeking regularization of his service. The same were not considered, but, the petitioner did not challenge before any court of law for the said action of the respondents seeking regularization.

[15] The petitioner while in service was found fault by the respondents in not performing his works as obligated and accordingly Sub-Rule (1) of Rule 10 of the CCS (CCA) Rules, 1965 was invoked and he was placed under suspension and action was initiated against him under Rule-16 of CCS (CCA) Rules. Thereafter, upon the representation made by the petitioner, the respondents have taken a lenient view and by order dated 3rd December 2007 revoked his suspension and allowed him to continue in service with a warning to him.

[16] It is also seen from the record that as per memo dated 16.04.1992, issued by the respondents, Tentative Seniority List of Panchayet Extension Officer as on 31.03.1992 was prepared and published, wherein, the name of the petitioner figured at serial number-38.

[17] Insofar as, salary and provident fund is concerned, the financial statements of the account department have considered him on a par with the regular employees and accordingly CAS/ACP to the extent is prepared and the same has been reflected in his service records.

[18] For the sake of testing the case in the light of the CCS Pension Rules are concerned, Rule 13 & 14 are extracted as under:

"13. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that-

(a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by Clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

[(c) the provisions of Clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19.]

14. Conditions subject to which service qualifies

(1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression "Service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government.

(3) In the case of a Government servant belonging to a State Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under the Government in an officiating or temporary capacity, as the case may be, shall qualify;

Provided that nothing contained in the sub-rule apply to any such Government servant who is appointed otherwise than by deputation to the service or post to which these rules apply."

[19] To test the case of the petitioner whether he was treated as a regular employee or ad-hoc on temporary basis recruitment, the invocation of Disciplinary Proceedings placing of the petitioner under suspension under Sub-Rule (1) of Rule 10 of the CCS (CCA) Rules, 1965 by the respondent authority and action initiated against him under Rule-

16 of CCS (CCA) Rules are to be perused. The said Rules are quoted hereunder:

Sub-Rule (1) of Rule 10 of the CCS (CCA) Rules:

..”10. Suspension

(1) The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor -General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.....”

Rule-16 of CCS (CCA) Rules:

”16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (5) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (24) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) consulting the Commission where such consultation is necessary. The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission to the Government servant, who shall be required to submit, if he so desires, his written representation or submission on the advice

of the Commission, to the Disciplinary Authority within fifteen days; and

(e) recording a finding on each imputation or misconduct or misbehavior.

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (24) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehavior delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission, if any;

[(vi) representation, if any, of the Government servant on the advice of the Commission;

(vii) the findings on each imputation of misconduct or misbehavior; and

(viii) the orders on the case together with the reasons therefor.]”

[20] The reliance placed by the Addl. G.A. on Notification dated 5th March, 1980 passed by the Government of Tripura in its Appointment & Services Department, Civil Secretariat in Clause 3, is quoted below:

“ 3. for rule 3 of the principal rules the following shall be substituted namely:-

Substitution of rule 3.

(3) A Government servant who has completed three years continuous regular service satisfactorily shall be deemed to be in quasi-permanent service.

Note:- For the purpose of this Rule, 'regular service' shall mean service in a pensionable post having prescribed scales of pay and the post is sanctioned by the competent authority of the Govt. but shall not include ad-hoc appointments....”.

[21] For the purpose of reference, the relevant paragraphs from the judgment of the Hon'ble Supreme Court in **Rudra Kumar Sain and**

others v. Union of India and others reported in **(2000) 8 SCC 25** are extracted below:

"16. The three terms ad hoc, stop gap and fortuitous are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression fortuitous in Strouds Judicial Dictionary is accident or fortuitous casualty. This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to fortuitous. In Blacks Law dictionary, the expression fortuitous means occurring by chance, a fortuitous event may be highly unfortunate. It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression ad hoc in Blacks Law Dictionary, means something which is formed for a particular purpose. The expression stop-gap as per Oxford Dictionary, means a temporary way of dealing with a problem or satisfying a need.

17. In Oxford Dictionary, the word ad hoc means for a particular purpose; specially. In the same Dictionary, the word fortuitous means happening by accident or chance rather than design.

18. In P. Ramanatha Aiyers Law Lexicon (2nd Edition) the word ad hoc is described as for particular purpose, Made, established, acting or concerned with a particular and or purpose. The meaning of word fortuitous event is given as an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God.

19. The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as ad hoc or stop-gap. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as fortuitous in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a stop-gap arrangement and appointment in the post as ad hoc appointment. It is not possible to lay down any straight-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to

come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre.

20. In Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be stop-gap or fortuitous or purely ad hoc. In this view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be fortuitous/ad hoc/stop-gap are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

[22] For examining the present case, the relevant paragraphs from the judgment of the Hon'ble Supreme Court passed in **K. Anbazhagan and another v. Registrar General, High Court of Madras and another** reported in **(2018) 9 SCC 293** are extracted below:

"62. Now we come to the entitlement of gratuity by the appellants. The definition of pension as given under Rule 3(1)(m) provides as follows:

"3.(1) (m) 'pension' includes gratuity except when the term pension is used in contradistinction to gratuity but does not include dearness allowance."

63. When the appellants are entitled for grant of pension, they are obviously entitled for grant of gratuity. Rule 45 of the 1978 Rules provided that a Government servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under Rule 43, shall be granted gratuity. Rule 45 sub-rule (1)(a) is as follows:

"45. Death-cum-Retirement Gratuity.-(1)(a) A government servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under rule 43, shall, on his retirement be granted death-cum-retirement gratuity as in the table below for each completed six monthly period of qualifying service, subject to a maximum of fifteen times the emoluments....",.

64. We, thus, are of the view that appellants are also entitled for gratuity which may be computed in accordance with 1978 Rules."

[23] In the light of the above, admittedly, the petitioner served around 30 years i.e. from 15.09.1989 to 28.02.2022 with the respondent organization in the Panchayet department and he made repeated requests to the respondents directly and also through proper channel during his service requesting them to consider his case for regularization of his services as he has completed more than 10 years without any gap.

The respondents during the tenure of the petitioner, initiated the disciplinary proceedings as they were treating his services as regular employee and placed him under suspension and thereafter conducted an enquiry and subsequently, the same was revoked. The seniority list has also been prepared where the name of the petitioner was reflected and thereafter, also objections were called for. The change in his salary and the other benefits were also reflected on record as the petitioner is a regular employee.

[24] Though it is a settled principle of law that if a citizen is not entitled for a lawful benefit, he cannot have a legally enforceable claim and cannot enrich himself to which he is not entitled to. But, here is a case where the petitioner is all through making the request to consider his case for regularization and the respondents were not acted upon and allowed him to work for 30 years and obtained his services and all their actions towards the petitioner was treating him as a regular employee.

[25] Though there is no express order of regularization of services of the petitioner, the expressed and implied actions of the respondents towards the petitioner need to be treated as if the petitioner is a regular employee.

[26] For the laches of the respondents in not acted upon to regularize the petitioner and allowing him to retire from services, when the petitioner raised his voice for pensionary benefits, respondents declined the request of the petitioner on the ground that his services were not regularized and have no weightage, as the petitioner is not at fault but it is the inaction of the respondents for sleeping over the matter all through. Recently, Hon'ble Supreme Court in **case No. Special Leave**

to Appeal (C) No.1109/2022 (The State of Gujarat & others v. Talsibhai Dhanjibhai Patel) affirming the order of the Hon'ble High Court of Gujarat has held that after rendering service for 30 years, an employee cannot be deprived of his pension. For the purpose of reference, the said order of the Hon'ble Apex Court is quoted herein-under:

"O R D E R

It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand.

In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years service.

Hence, the Special Leave Petition stands dismissed. Pending application(s), if any, shall stand disposed of."

[27] In view of the above discussion and the observation as cited (*supra*), this Court has no hesitation to say that the petitioner is entitled for pensionary benefits and accordingly the impugned memorandum dated 23rd August, 2023 passed by the respondent is set aside. The petitioner is permitted to approach the respondent(s) and file all his relevant documents seeking pensionary benefits. The respondents concerned shall take steps for releasing the pensionary benefits in accordance with law treating the petitioner's service as a regular employee within a period of 4(four) months from the date of receipt of the such relevant documents from the petitioner.

In view of the above, the present writ petition is allowed and the same is accordingly disposed of.

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

JUDGE

HIGH COURT OF TRIPURA



Sabyasachi G.

**SABYASACHI
GHOSH**

Digitally signed by
SABYASACHI GHOSH
Date: 2024.02.12 16:36:34
+05'30'

सत्यमेव जयते