

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.631 OF 2023**

Smti. Sumitra Debbarma,
Wife of late Kartik Kumar Debbarma,
Resident of village Bardhaman Thakur para,
P.O.- Radhamohanpur, P.S. Jirania

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

Versus

1. State of Tripura,
Represented by the Secretary to the
Government of Tripura, Department of Home,
New Secretariat, P.O. & P.S. New Capital Complex,
District- West Tripura, Pin-799010.

2. The Deputy Inspector General of Police,
(Crime Branch), Old Secretariat Building Premises,
P.O.- Agartala, P.S. West Agartala,
District- West Tripura.

3. The Accountant General(A&E), Tripura,
Malancha Niwas, P.O.- Kunjaban, Agartala,
District- West Tripura, Pin-799006.

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

For the Petitioner(s) : Mr. B.N. Majumder, Sr. Advocate.
Mr. B. Paul, Advocate.

For the Respondent(s) : Mr. B. Majumder, Deputy SGI.
Mr. M. Debbarma, Addl. G.A.

Date of hearing and delivery of
Judgment & Order : 04.04.2024

Whether fit for reporting : YES.

HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R (O R A L)

Heard Mr. B.N. Majumder, learned Sr. counsel assisted by Mr. B. Paul, learned counsel appearing for the petitioner as well as Mr. M. Debbarma, learned Addl. G.A., appearing for the State-respondents and Mr. B. Majumder, learned Deputy SGI appearing for the respondent No.3.

2. This present writ petition has been filed under Article 226 of the Constitution of India seeking the following reliefs:-

"i) Issue RULE NISI;

ii) Issue RULE calling upon the Respondents to show cause as to why a writ of Certiorari shall not be issued quashing/cancelling/ setting aside the letter of acceptance for voluntary retirement and the order of struck off dated 24.06.2020, order dated 27.07.2020 and the impugned communication/ order dated 28.07.2023, issued by the Superintendent (Crime Branch), office of the IGP, Crime & Intelligence, respectively. (Annexure-3. Annexure-4 & Annexure-8, supra);

iii) Issue RULE calling upon the Respondents or each one of them as to why alternatively a writ in the nature of mandamus shall not be issued to the Respondents directing / mandating / commanding to treat the Petitioner to have been retired from the service on completion of her 20 (twenty) years qualifying service on and from 18.11.2020 by altering/ modifying the acceptance letter of voluntary retirement of the Petitioner dated 24.06.2020 (Annexure-3, supra):

iv) Issue RULE calling upon the Respondents or each one of them as to why any other appropriate writ / writs, Order/ Orders shall not be passed for giving complete and full relief to the petitioner.

v) Issue Rule NISI calling upon the State Respondents or each one of them to show cause as to why a Writ of Mandamus shall not be issued directing / commanding / mandating the State Respondents to extend the pension benefit of the Petitioner by modifying the letter of acceptance of voluntary retirement of the Petitioner treating her to have been retired voluntarily after completion of 20 (twenty) years of service of the petitioner.

AND

In case the Respondents show cause or not, upon hearing the sides, your Lordships may be pleased to make the Rule absolute in terms of the prayers i to vi;

3. It is the case of the petitioner that she joined the service under the State Respondents on 20.12.2000 as a Group D (Follower) under the Die-in-Harness scheme. In the year 2018, the petitioner became seriously ill and applied for voluntary retirement on 04.06.2020. But the petitioner had not completed her qualifying service of 20 years, as required under Rule 48-A of the C.C.S (Pension) Rules. Her prayer was accepted with effect from 31.07.2020 (forenoon) vide voluntary pension Notice dated 24.06.2020 and a struck-off order was issued on 27.07.2020 giving effect to the said voluntary retirement from 31.07.2020. While considering the pension proposal by the Accountant General, Tripura, it was detected that the voluntary retirement of the petitioner was wrongly accepted since the petitioner had not completed the qualifying service of 20 years and had only completed 19 years 7 months and 12 days of her service and, therefore, the pension and other retiral benefit could not be extended to the petitioner. The petitioner approached the state respondents to redress her grievances on 25.04.2022, but, it was also left uncared for. As such, the petitioner approached this Court by filing W.P(C) No. 813 of 2022 which was disposed of by an order

dated 28.04.2023 directing the respondents to consider the prayer within 2(two) months. However, the state respondents have rejected the prayer of the petitioner vide order dated 28.07.2023 without assigning any reason how the premature prayer for voluntary retirement was accepted and the petitioner was stuck off from the role without following the prescription of Rule 48-A of the CCS (Pension) rules 1972. Hence aggrieved thereby, the petitioner has filed this present Writ petition seeking the above-mentioned reliefs.

4. Mr. B.N. Majumder, learned Sr. counsel assisted by Mr. B. Paul, learned counsel appearing for the petitioner submits that the State-respondents have committed a mistake in law in accepting the prayer of the voluntary retirement of the petitioner dated 04.06.2020 since the petitioner had not completed the period of qualifying service of 20 years as mandated under Rule 48-A of CCS (Pension) Rules. For the wrong committed by the respondents for illegally accepting the pre-mature application of the petitioner of voluntary retirement in contravention of the provision of Rule 48-A of the CCS(Pension Rules), his client cannot be made to suffer. Further, the petitioner submitted prayer for voluntary retirement on 04.06.2020, and the same was accepted by respondent No.2 on 24.06.2020 i.e. only after 20 days of submitting such prayer for

voluntary retirement which is against the Rule. Stating thus, learned Sr. counsel urged this Court to direct the respondents to extend the pensionary benefit of the petitioner by treating her to have been retired voluntarily after completion of 20(twenty) years of service.

5. On the other hand, Mr. B. Majumder, learned Deputy SGI appearing for the respondent-Accountant General submits that in terms of Rule 48-A of CCS (Pension) Rules, the petitioner should have completed 20 years of qualifying service but the petitioner has only completed only 19 years 7 months and 12 days of her service and as such, his client had informed the same to the respondent No.2 on 27.07.2020. Since the petitioner had not completed 20 years of qualifying years of service, the Rule does not allow the Accountant General Tripura to disburse the pensionary benefits to the petitioner herein.

6. Mr. M. Debbarma, learned Addl. G.A., appearing for the State-respondents submits that the Department has sympathy with the petitioner and as such, the pension proposal of the petitioner herein was sent by the State-respondents.

7. Heard both sides and perused the evidence on record.

8. For proper adjudication of the case in hand, let us produce Rule 48-A of the CCS(Pension) Rules:-

"48-A. Retirement on completion of 20 years' qualifying service

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from ser Provided that this sub-rule shall not apply to a Government servant,

including scientist or technical expert who is- (i) on assignments under the Indian Technical and Economic Co- operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes.

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:

(emphasis supplied)

9. Rule 48-A of the CCS(Pension) Rules, categorically says that the employee '*may*' apply for retirement before the employer, and giving notice of not less than three months for such is not mandatory, and thereafter, the employer can consider the retirement. This only pertains to the employee and the employer and in so far as releasing the pension is concerned, the entitlement only comes into force once 20 years of service is completed by the employee. The language of the Rule is clear and unambiguous in its requirement for a minimum of 20 years of service for eligibility.

10. In the present case, it is seen from the record which is not disputed by both sides, that the petitioner herein has not completed 20 years of service, and as such she is not entitled to any relief in this regard.

11. In terms of the above discussion and findings, this present writ petition stands dismissed. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE



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