

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.156 of 2023

Shri Sourav Datta

..... Appellant(s)

V E R S U S

The State of Tripura and others

..... Respondent(s)

For Appellant(s)	:	Mrs. S. Deb (Gupta), Advocate. Ms. Rumpa Dey, Advocate.
For Respondent(s)	:	Mr. Kohinoor N Bhattacharya, G.A. Mr. B.N. Majumder, Senior Advocate. Mr. D.J. Saha, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

_O_R_D_E_R_

20/02/2024

The appellant was appointed after some delay as his position was at serial No.100 of the merit list in UR category on the post of LDC in the District Court, West Tripura, Agartala. He was appointed on 05.09.2018 i.e. after coming into force of the notification dated 13.07.2018 whereunder the employees appointed after 01.07.2018 would be covered by New Pension Scheme instead of the CCS(Pension) Rules, 1972. According to the appellant/writ petitioner, others from the same merit list have been appointed prior to this cut-off date. The delay in appointment of the appellant was on account of the reason that one of the selected person in the serial No.87 resigned. Appointment upto SL. No. 99 from the merit list dated 11.01.2017 were approved. However, representation of the appellant to allow him to be covered under the CCS(Pension) Rules, 1972 has been declined by order dated 19.09.2020 (Annexure-5). The order reads as under:

“OFFICE OF THE DISTRICT & SESSIONS JUDGE,
WEST TRIPURA JUDICIAL DISTRICT, AGARTALA”

No.4(b)(821)-DJ/W/Estt./2018 9285-88

September, 19th of 2020

__//__ ORDER __//__

On his prayer dated, **27.05.2020**, for consideration of application of Existing Central Civil Services (Pension) Rules 1972 as adopted in the state of Tripura, District & Sessions Judge, West Tripura, Agartala, has been pleased to observe that, as per Rules/Notification **No.F.8(1)-FIN(G)/2004(P-I)**, dated 13.07.2018 of the Finance Department, Government of Tripura, Sri. Sourav Datta, L.D.C of District Record Room is governed by NPS and offer of appointment was issued in that line which was duly accepted by him. Subsequently, he also submitted an undertaking to the effect that he will be governed by new Pension Rules.

As such, his representation deserves no merit and hence “Rejected”.

Sd/-

Civil Judge (Sr. Div) & Asst. Sessions Judge,
Court No. 01,
West Tripura Judicial District, Agartala
(Head of Office)

To
Sri. Sourav Datta, L.D.C, D.R.R
O/O the District & Sessions Judge,
West Tripura, Agartala”

The appellant/writ petitioner approached the Writ Court with the following prayers:

“i) Issue rule calling upon the respondents to show cause as to why a writ of mandamus and/or similar order in the nature thereof shall not be issued declaring that the petitioner is entitled to notional seniority from the date he should have been appointed.

ii) Issue rule calling upon the respondents to show cause as to why a writ of Mandamus and/or similar order in the nature thereof shall not be issued to treat the petitioner as a member of the pension scheme under the existing Central Civil Services (pension) Rules, 1972 as adopted in the state of Tripura.

iii) Issue rule asking the respondents to show cause as to why a writ of Mandamus and/or similar order in the nature thereof shall not be issued directing them to proceed in the way the central Government has proceeded to obtain one-time option from its employees regarding applicability of new pension scheme.”

However, he has setup a case now that since the Central Government has issued a office memorandum on 03.03.2023 (Annexure-6) whereby it has been resolved that where the Central Government civil

employee has been appointed against a post or vacancy which was advertised/notified for recruitment/appointment, prior to the date of notification for National Pension System i.e. 22.12.2003 and is covered under the National Pension System on joining service on or after 01.01.2004, they may be given a one-time option to be covered under the CCS(Pension) Rules, 1972 (now 2021). This option may be exercised by the concerned Government servants latest by 31.08.2023.

Incidentally, New Pension Scheme was implemented in Tripura only w.e.f. 01.07.2018 by virtue of the notification dated 13.07.2018 (Annexure-3) whereas such New Pension Scheme was implemented under the Central Government w.e.f. 01.01.2004. The notification dated 13.07.2018 (Annexure-3) of the State Government at para (xiv) provided that Government servants joining the service of the State Government on or after 1st July 2018 shall not be governed by the existing Central Civil Services(Pension) Rules, 1972 (as adopted in the State of Tripura). So far as their pension and other retirement benefits are concerned, they will be governed by a new set of Pension Rules, which are being formulated in line with the Contributory Pension Scheme announced by Government of India. All concerned Controlling Officers were requested to take immediate steps for compliance of the guidelines indicated above.

The appellant consciously submitted an undertaking on 18.09.2018 to be bound by the new Pension Rules. The office memorandum dated 03.03.2023 (Annexure-6) issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare, Government of India does not apply to the State Government employees on its

own. The State Government has not adopted this office memorandum giving an extended date for exercise of option to its employees to come within the CCS(Pension) Rules, 1972 (now 2021) as granted by the Central Government. As such, the appellant does not have a legal right to claim an exercise of option after 01.07.2018 in the manner granted by the Central Government.

Mrs. S. Deb (Gupta), learned counsel for the appellant submits that delay in appointment of the appellant out of the common merit list dated 11.01.2017 was on account of the official delays on the part of the respondents and has created hardship upon the appellant. It however, appears that appellant was at serial No.100 of the merit list and he was appointed only after approaching this Court in WP(C) No.213 of 2018 which was disposed of on 29.06.2018 and that too because the candidate at serial No.87 resigned during the lifetime of the panel. The learned Writ Court while disposing of the said writ petition did not stipulate a condition that his joining would be reckoned from the date when other similarly situated candidates above in the merit list had joined. As such, the argument of hardship on the part of the appellant cannot be accepted. Learned counsel for the appellant has also submitted that the appellant did not have an option not to submit an undertaking in view of para (xv) of the notification dated 13.07.2018. Learned counsel for the appellant has placed reliance upon a decision dated 04.02.2022 of the Gauhati High Court passed in **WP(C) No.7369 of 2021** and submitted that where the appointment process has been delayed at the end of the appointing authority or selecting authority, petitioner who has fallen after the cut-off date of implementation of the new Pension Scheme has been granted relief. However, on two counts the judgment would not help the case of the appellant. Firstly,

that the appointment process was not delayed. Appellant's appointment was made in September, 2018 only after one candidate at serial No.87 had left the job. Secondly, the appellant has consciously given an undertaking to be governed by the new Pension Scheme which was implemented by the Government of Tripura by virtue of the notification dated 13.07.2018 w.e.f. 01.07.2018.

Moreover, appellant has become wiser after issuance of the office memorandum of the Central Government on 03.03.2023 to exercise an option by extension of time limit. Since the office memorandum of the Central Government is not ipso facto applicable to the State of Tripura unless and until the State Government adopts such resolution, it would not be proper to grant relief to the appellant in the manner prayed for, for coming under the CCS(Pension) Rules, 1972. As such, this Court does not find any ground to interfere with the impugned order. Accordingly, the instant appeal is dismissed.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ