

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.470 of 2024

Sri Anil Debbarma,

S/o. Late Baishak Debbarma,

R/o. Barkathal, Vidya Lochan Para, P.O. Barkathal, P.S. Sidhai,

District- West Tripura, PIN- 799211, Aged about- 56 years.

.....Petitioner

- Versus -

1. The State of Tripura,

Represented by its Principal Secretary, Revenue Department, Govt. of Tripura, New Secretariat Building, Agartala, P.O. Secretariat, P.S. New Capital Complex, District- West Tripura, PIN- 799010.

2. The Director,

Directorate of Land Records and Settlement, Govt. of Tripura, P.O. Agartala, P.S. West Agartala, District- West Tripura, PIN- 799001.

..... Respondent(s)

For the Petitioner(s) : Mr. Arijit Bhaumik, Advocate.

For the Respondent(s) : Mr. Dipankar Sarma, Addl. GA.

Date of hearing and delivery : **1st May, 2025.**
of Judgment & Order

Whether fit for reporting : **YES.**

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (Oral)

Heard Mr. Arijit Bhaumik, learned counsel appearing for the petitioner and Mr. Dipankar Sarma, learned Addl. G.A. appearing for the State-respondents.

2. Admittedly, the petitioner was appointed as Night Guard under respondent No.1, on 11.04.1990 and in the year 2004, he was posted in the office of respondent No.2, where he was rendering his service as Night Guard. Thereafter, as stated by Mr. Bhaumik, learned counsel, he was sent on deputation to the office of the DM & Collector, Agartala, where he was discharging his duties but from 06.06.2010,

suddenly he stopped attending his duty. From the office of the DM & Collector, West Tripura, Agartala, initially one notice dated 18.06.2010 was issued to him, asking him to explain within 3(three) days as to why disciplinary action shall not be taken against him for such unauthorized absence. Again, on 03.03.2011, similar notice was issued from the office of the said DM & Collector, asking the petitioner to appear before him in person and to show cause in writing, stating his grounds for such unauthorized absence but at that time also he did not appear. Thereafter, in the month of March 2011, a notice was also published in Dainik Sambad, asking him to appear before the DM & Collector and to show cause in writing regarding his such unauthorized absence. Despite that, he did not join nor respond to said show cause notices and ultimately, vide a letter dated 05.11.2020 (Annexure-5 to the writ petition), the DM & Collector repatriated him in his parent department, i.e., in the office of the Directorate of Land Records and Settlement, Govt. of Tripura. Thereafter, the impugned memorandum dated 22.12.2023 (Annexure-6 to the writ petition), was issued by the Directorate of Land Records and Settlement, Govt. of Tripura, by virtue of the provision of Rule 12 of the Tripura State Civil Services (Leave) Rules, 1986, as amended by the 11th Amendment of 2013, treating that he had resigned from his service with effect from the date of issuance of the said memorandum. Challenging the said memorandum, the present writ petition has been filed.

3. Mr. Bhaumik, learned counsel, strenuously argues that the Tripura State Civil Services (Leave) Rules, 1986, was amended vide its 11th Amendment in the year 2013 w.e.f. 20.06.2013, inserting the following provisions in Rule 12 of the original Leave Rules :

12. Maximum amount of continuous leave

Unless the Governor, in view of the exceptional circumstances of the case otherwise determines, no Government servant shall be granted leave of any kind for a continuous period exceeding five years.

[(1): A government servant shall be deemed to have resigned from the service if he-

(a) is absent without authorization for a period of one year; or

(b) remains absent from duty for a continuous period of five years, with or without leave; or

(c) continues on foreign service beyond the period approved by the Government;

Provided that a reasonable opportunity to explain the reason for such absence or continuation on foreign service shall be given to the servant before the provisions of this rules are invoked.]

4. According to Mr. Bhaumik, learned counsel, the earlier show cause notices were issued and paper publication was made prior to amendment of said provision, and therefore, those show cause notices have no relevance or bearing on the matter in issue and as per said amended provision, it was incumbent upon the Directorate of Land Records and Settlement to issue a show cause notice by giving reasonable opportunity to the petitioner to explain the reason for such absence before taking such coercive action against him by treating his absence as deemed resignation. According to learned counsel, no such opportunity was provided to the petitioner nor any such show cause notice was issued to him in terms of abovesaid Rule 12(1) of the Rules of 1986, and therefore, the impugned order is liable to be quashed. Learned counsel also submits that as the petitioner was suffering from severe mental disease, he could not join his duty.

5. Mr. Sarma, learned Addl. G.A., on the other hand, submits that for about 13 years the petitioner was unauthorizedly absent from his duty without any information and on 3(three) occasions as indicated

earlier, show cause notices were also issued upon him. However, despite the same, he did not join. According to learned Addl. G.A., when all the 3(three) attempts went in vain and the petitioner did not respond, there was no further necessity to issue fresh show cause notice to the petitioner for issuing the impugned order. Learned Addl. G.A. also submits that as per said amended provision of Rule 12, if one employee remains absent for a continuous period of 5 years there is no scope for regularization of his such absence by granting any kind of leave, and therefore, there is no other option but to treat the petitioner to have resigned from his service.

6. The Court has considered contentions of both sides and has also taken note of the materials placed by the parties in the record. It is not disputed by the parties that by said 11th Amendment of 2013 w.e.f. 20.06.2013, said new provision was inserted in the Leave Rules of 1986, for treating such deemed resignation by the authority even in the case of an employee who remains absent without authorization for a period of one year or more.

7. Here, the appointing authority of the petitioner was Directorate of Land Records and Settlement, Govt. of Tripura, during the relevant period and there is nothing placed in the record that prior to invoking of the provision of Sub-Rule 1 of Rule 12, the Director of Land Records and Settlement had provided any reasonable opportunity to the petitioner to explain the reason for his such absence in terms of said Sub-Rule 1 of Rule 12 of the Rules of 1986. Though learned Addl. G.A., gives emphasis on the show cause notices and paper publication issued earlier by the DM & Collector, West Tripura, regarding such continuous absence of the petitioner but same were issued prior to the relevant amendment of Leave Rules came into force and same were not issued in

compliance of provision of Rule 12(1) of the Rules of 1986. Therefore, such explanations as offered on behalf of the respondents are not convincing and acceptable. As per above said Sub-Rule 1 of Rule 12 of the Leave Rules, it was incumbent upon respondent No.2 to provide one opportunity to the petitioner to explain his reason for such prolonged absence before taking such action against him.

8. In view of above, there is no other alternative but to quash the impugned order 22.12.2023, issued by the Directorate of Land Records and Settlement, Govt. of Tripura, by treating such absence of petitioner as deemed resignation. Accordingly, the said memorandum dated 22.12.2023, is hereby quashed. However, the Directorate of Land Records and Settlement will take a fresh decision regarding such absence of the petitioner in terms of the provision of Sub-Rule 1 of Rule 12 of Tripura State Civil Services, 1986, after providing reasonable opportunity to the petitioner to explain the reason for such prolonged absence. The entire process should be completed by the respondents within 2(two) months from the receipt of a copy of this order.

With such observations and directions, the writ petition is disposed of.

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

JUDGE