

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No. 633 of 2024**

1. Smt. Mina Deb
D/o: Late. Haripada Deb
R/o: Ramnagar Road No. 10, P.O: Ramnagar, P.S: West Agartala, West Tripura, Pin : 799002

-----Petitioner.

Versus

- 1. The State of Tripura**
To be represented by the 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 Social Welfare and Social Education, Govt. of Tripura New
Secretariat Building, New Capital Complex, Kunjaban, P.S : New Capital
Complex, Agartala , West Tripura, PIN- 799010.
- 3. The Director**
Social Welfare and Social Education Department, Govt. of Tripura, Malancha,
Ujan Abhoynagar, Agartala, West Tripura.
- 4. The Officer-in-Charge,**
Tripura Social Welfare Board, Pensioner's Awaas Ashray, Gurkhabasti,
Agartala.
- 5. Tripura State Social Welfare Board**
To be represented by the Chairperson, Tripura State Social Welfare Board,
Akhaura Road, Agartala, Tripura.

.....Respondents.

For the Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. K. Nath, Advocate. Ms. S. Debbarman, Advocate.
For the Respondent(s)	:	Mr. K. De, Addl. G.A.
Date of hearing	:	10.03.2025.
Date of delivery of Judgment & Order	:	10/ 03/2025.
Whether fit for reporting	:	YES

**BEFORE
HON'BLE MR. JUSTICE T. AMARNATH GOUD**

J U D G M E N T & O R D E R (Oral)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the petitioner. Also heard Mr. K. De, learned Addl. GA appearing for the respondents-State.

[2] The brief facts of the case is that, the petitioner joined the Tripura State Social Welfare Advisory Board in the Post of Contingent Clerk-cum-Typist w.e.f, 30.12.1987. Subsequently, after attaining the age of superannuation the petitioner retired from service on 31.01.2020. But it is pertinent to mention here that while providing pension and other service benefits the 50% past service rendered by the petitioner as contingent Worker was not counted and the impugned order dated 31.08.2024 is passed by the respondents. Being aggrieved the petitioner sought for the following reliefs:-

"i) Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to count 50% of the service rendered by the Petitioner w.e.f. 31.12.1987 till her regularization on 01.02.2011 along with the regular service rendered by the Petitioner from 01.02.2011 to 31.01.2020 for determining the qualifying service years rendered by the Petitioner necessary for calculation of pension and other pensionary benefits.

ii) Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to recalculate the amount of monthly pension and other pensionary benefits including DCR Gratuity which became admissible to the petitioner taking into consideration 50% of service rendered by the Petitioner as Contingent Clerk w.e.f 31.12.1987 to 01.02.2011 with her Regular service as LDC w.e.f. 01.02.2011 to 31.01.2020 and pay the arrear amount of pension with interest @9% per annum and thereafter to continue the current pension.

iii) Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to pay interest @9% on delayed payment of pension and other pensionary benefits.

iv) Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to pay the amount of gratuity and pensionary benefit which became admissible to the Petitioner on her retirement from service after adding 50% of service rendered by the Petitioner as Contingent Clerk with her regular service in the post of LDC for determining the qualifying service of the Petitioner and pay the balance amount after deducting

the payment already made with interest @9% per annum on the balance amount with effect from the date it became payable till such payment is made.

v) Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or any other order/orders shall not be issued whereby directing the Respondents to quash and cancel the Order, dated, 31.08.2024, issued by the Director, Social Welfare and Social Education, Govt. of Tripura

vi) Make the rules absolute.

vii) Call for records.

viii) Pass any further order/orders as this Hon'ble High Court considers fit and proper.

[3] The petitioner, as per Memorandum dated 30.12.1987, joined in the post of Contingent Clerk-Cum-Typist on the consolidated Pay of Rs.700/- per month in the establishment of Tripura State Social Welfare Advisory Board, Agartala. Accordingly, she joined on 31st December 1987, service period was only for 89 days. Thereafter, from time to time her engagement has been renewed. The Chairperson of the said Board issued memorandum dated 08.01.1988 engaging the petitioner in the post of Contingent Clerk-cum- Typist for a period of 89 days.

[4] The Chairperson, Tripura State Social Welfare Board, issued a Memorandum dated 24.01.2011 by which the petitioner was issued an offer of appointment to the post of Lower Division Clerk along with service allowances as admissible from time to time. In pursuance thereof, the petitioner submitted resignation from her Contingent Clerk-cum-Typist post, by letter dated 28.01.2011. Thereafter, the Chairperson of the said Board issued memorandum dated 29.01.2011, wherein the petitioner has been informed to join on 1st February, 2011 in the post of Lower Division Clerk in the establishment of the said Board. The petitioner worked in the respondent institution and on attaining superannuation retired from service on 31.1.2020. That, while determining the regular monthly pension and other pensionary benefits of the Petitioner, the Respondents did not add 50% of service rendered by the Petitioner as Contingent Clerk w.e.f. 31.12.1987 to 31.01.2011 and the Petitioner's pensionary benefits has been calculated and

determined only on the basis of her regular service as Lower Division Clerk, w.e.f., 01.02.2011 to 31.01.2020, as a result thereof the Petitioner has been deprived of her actual pensionary benefits. The Respondents ought to have added 50% of service rendered by the Petitioner as Contingent Clerk with her regular service in the post of LDC.

[5] That, being aggrieved the petitioner approached the Hon'ble High Court by filing writ petition vide No. W.P.(c) No.23 of 2024, and the same was disposed of by an order dated 04.07.2024, directing the respondents to consider the case of the petitioner and to pass a reasoned order in accordance with law. The relevant portion of the aforesaid order is extracted herein below:-

"Thus, without going into the merits of the case, this Court is of the view that ends of justice would-be-met-if the respondents concerned are directed to consider the case of the petitioner in the light of her representation dated 28.11.2023 and to pass a reasoned order in accordance with law as expeditiously as possible preferably within a period of two months from the date of receipt of the copy of this order. Accordingly, the same is ordered.

It is needful to say that in the event, if any decision is made, it will be open for the petitioner to avail remedies under law....."

In compliance to the above order as passed by this Hon'ble Court, the respondents passed an order dated 31.08.2024, wherein the claim of the petitioner has been regretted and the same is impugned herein.

[6] In support of his arguments, he relied on the following judgments of the Hon'ble Apex Court which are as under :

1. **Ahalya A. Samtaney Versus State of Maharashtra and Others** reported in **(2018) 9 SCC 92.**

2. **Prem Singh Versus The State of Uttar Pradesh and Others** reported in **(2019) 10 SCC 516.**

Mr. Roy Barman, learned senior counsel, therefore, urges before this court to allow the writ petition.

[7] Mr. K.De, learned Addl. G.A, appearing for the respondents-State on the other hand, submits that the petitioner joined the Tripura State Social Welfare Board in the post of Contingent Clerk-Cum-Typist on 31-12-1987. But

not on 30-12-1987. Her service was regularized in the post of Lower Division Clerk w.e.f. 01-02-2011 and she retired from service on 31-01-2020 after attaining the age of superannuation. From 31-12-1987 to 11-12-2009, the Petitioner had worked in the office as Contingent Clerk-Cum-Typist subject to the condition that her service will automatically be broken after each 89 days and in this condition she worked upto 11-12-2009. As per Memorandum dated 31.07.2014, the condition of break in service has been withdrawn w.e.f. 12-12-2009. The petitioner has fulfilled only 9 years in the post of LDC as regular service. As she did not complete 10 years service, she was not qualified to get pension. Therefore the Social Welfare Board i.e Respondent No. 5 had taken decision to allow pension taking into consideration of the previous service from 12-12-2009 i.e. from the date of lifting the condition of breaking service.

[8] He further submits before this Court that in accordance with the Memo No.F.8(3)-FIN(G)/78 dated 16-08-1978, Memo No.F.8(3)-FIN(G)/78 dated 26-09-1979, Memo No.F.8(3)-FIN(G)/78 dated 19-07-1982, & Memo No.F.8(3)-FIN(G)/78 dated 25-02-2010 of the Finance Department, Govt. of Tripura, the spell of broken service shall not be taken into account for determining the qualifying service for payment of pension. The spell of service of the petitioner from 31-12-1987 to 11-12-2009 had been broken several times as per condition of the appointment i.e. after each 89 days. Hence, the question as raised for counting 50% of her past service for that period does not arise. Therefore, he urges before this court to dismiss the petition.

[9] This court is of the view that as the petitioner rendered her 50% of past service as contingent worker and the respondents herein given every time 89 days of service and 01 day's break again they start from day one onwards. The action of the respondents in giving artificial breakage of 01 day is not proper, as per service rules if there is 90 days of continuous service. This method has been adopted to deprive the petitioner. The Hon'ble Apex Court in some of its Judgments also gave the verdict.

The relevant portions of the aforesaid judgments of Hon'ble Apex Court are extracted as under :-

1. Ahalya A. Samtaney Versus State of Maharashtra and Others reported in **(2018) 9 SCC 92.**

"20. It is also relevant to note that pension is granted only if there is 20 years of continuous service, thus, the grant of pension itself also supports the continuation of service of the appellant.

22. We really do not have to labour much on this aspect as the High Court of Bombay itself had an occasion to examine the same in *Pervez H. Lentin v St. Xavier's College*. In a sense this is also an identical case of an artificial break arising from the change in the education pattern. We may usefully extract para 16 of the said judgment as under: "16. The petitioner was undoubtedly in continuous service....."

2. Prem Singh Versus The State of Uttar Pradesh and Others reported in **(2019) 10 SCC 516.**

"31. In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-charged basis. They ought to have resorted to an appointment f on regular basis. The taking of work on the work-charged basis for long amounts to adopting the exploitative device. Later on, though their services have been regularised. However, the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work-charged establishment but have also been g deprived of counting of the period for pensionary benefits as if no services had been rendered by them. The State has been benefitted by the services rendered by them in the heydays of their life on less salary in work-charged establishment."

33. The question arises whether the imposition of rider that such service to be counted has to be rendered in-between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularisation had been made on vacant posts, though the employee had not served prior to b that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in the Note to Rule 3(8) of the 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularisation. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the d employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an e impermissible classification."

[10] In view of the above, this court is of the view that the petitioner cannot be deprived of the legitimate expectation of pension after serving the

respondents. The technical methods adopted by the respondents to deprive the petitioner's right to pension and eligibility cannot be appreciated. Periodical 01 day (One day) breakage and discontinuity cannot be said as breakage in service. The writ petition is liable to be allowed and directing the respondents to treat 50% of the service rendered by the petitioner as a contingent worker taking into consideration the regularization of service and fixing the entitlement of her retirement benefits in accordance with law. The impugned proceeding dated 31.08. 2024 which is under challenge stands set aside.

[11] The petitioner is at liberty to file their claim statement of account before the respondents along with a copy of this order and on receipt of the same the respondents shall fix the amounts and extend the benefits to which the petitioner is entitled, in the light of the above observation and in accordance with law as early as possible preferably within a period of 3 months from the date of receipt of the copy of this order.

[12] Insofar as the interest is concerned, it shall be 6% after 3 months till its realization.

[13] With the above observation and direction this instant writ petition is allowed and the same is disposed of. As a sequel, miscellaneous application(s) pending, if any, shall stand closed.

JUDGE

Paritosh

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