

**HIGH COURT OF TRIPURA
AGARTALA**

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE JUSTICE BISWAJIT PALIT**

WA NO.128 OF 2024

1. Bibhu Debbarma,

D/o: Lt. Birulal Debbarma,
R/o: Vill- Rangachara, P.O.- Sikaribari, P.S.- Ambassa,
District-Dhalai, Tripura, Pin-799288.(Age-35 years)

2. Uttam Debnath,

S/o: Digendra Debnath,
R/o: West Lalchari, P.O.-Balaram Bazar,
District- Dhalai, Tripura, Pin-799204.
(Age-31 years)

.....The Appellant(s)

Verses

1. The State of Tripura,

(To be represented by) the Secretary,
Education(School) Department,
Government of Tripura,
New Secretariat Complex,
Kunjaban, Agartala, West Tripura, Pin-799010.

2. The Secretary,

Finance Department, Government of Tripura,
New Secretariat Complex,
Kunjaban, Agartala, West Tripura, Pin-799010.

3. The Director of Secondary Education,

Government of Tripura, Agartala,
West Tripura, Pin-799001.

.....Respondent(s)

WA NO.27 OF 2025

1. Sanjoy Rudra Paul,

S/o: Moanoranjana Rudra Paul,
R/o Kashipur, mission road, Reshambagan,
East Agartala, West Tripura, Pin-799008(Age-37 years).

2. Shilpi Das,
W/o: Indrajit Bhowmik,
R/o: Vill. & PO-Mariamnagar,
District-West Tripura, P.S. East Agartala,
Pin-799008.(Age-33 years).

3. Shatabdi Majumder,
D/o: Sukhendu Bikash Majumder,
R/o: Ranirbazar, Gopal Road, P.O.-Ranirbazar,
Dist-West Tripura, Pin-799035(Age-33 years).

4. Prasenjit Nath,
S/o: Mritynujoy Nath,
R/o: Vill & P.O.-Rajnar Laxmipur,PS. Dharmanagar,
Dist-North Tripura Pin-799254(Age-33 years).

5. Simul Das,
S/o Kunja Mohan Das,
R/o: Vill & P.O-Rangamati, P.S. Birganj,
Dist- Gomati, Tripura, Pin 799101. (Age-33 years).

6. Sudipta Choudhury,
D/o: Gouranga Choudhury,
R/o: Vill & P.O. Pecharthal, Unakoti Tripura,
Pin-799263. (Age-33 years).

7. Sumen Kanti Nath,
S/O: Birendra Kumar Debnath,
R/o: Vill & P.O.- Kadamtala,
District-North Tripura, Pin-799261(Age-33 years).

..... **Appellant(s)**

Versus

1. The State of Tripura,
(To be represented by) the Secretary,
Education (School), Department,
Government of Tripura, New Secretariat Complex,
Kunjaban, Agartala, West Tripura, PIN-799010.

2. The Secretary,
Finance Department, Government of Tripura,
New Secretariat Complex, Kunjaban, Agartala,
West Tripura, Pin-799010.

3. The Director of Secondary Education,
Government of Tripura, Agartala, West Tripura,
PIN-799001.

.....Respondent(s)

For the Appellant(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. S. Bhattacharjee, Advocate.
Mr. K. Nath, Advocate.
Ms. A. Debbarma, Advocate.
Mr. D. Paul, Advocate.

For the Respondent(s) : Mr. S.M. Chakraborty, Adv. General
Mr. P. Gautam, Sr. G.A.
Mr. Kohinoor N. Bhattacharyya, G.A.
Mr. D. Sharma, Addl. G.A.
Ms. P. Chakraborty, Advocate.

Date of hearing and delivery of
Judgment & Order : 13.08.2025.

Whether fit for reporting : YES.

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

T. Amarnath Goud, J

1. Both the writ appeals are heard and decided together as common questions of law and facts were involved. The appellants herein were appointed as Post Graduate Teachers and Graduate Teachers under the State of Tripura after the New Pension Scheme (*in short* 'NPS') was brought into effect by Notification dated 13.07.2018 with retrospective operation from 01.07.2018. At the time of their appointment, they submitted undertakings in the prescribed format, acknowledging that they would be governed by the NPS and not by the Central Civil Services (Pension) Rules, 1972, as adopted by the State of Tripura.

2. Prior to the present proceedings, the appellants herein had earlier approached the learned Single Judge by filing WP(C) No.608 of

2022 and WP(C) No.609 of 2022, praying for coverage under the Old Pension Scheme(*in short* 'OPS'). Those writ petitions were disposed of by order dated 25.04.2023 with a direction to the petitioners to submit individual representations before the competent authority.

3. Pursuant thereto, the appellants submitted their representations, which were rejected by orders dated 07.08.2023 and 08.08.2023 respectively, passed by the Director of Secondary Education, Government of Tripura. The ground taken in the rejection was that the petitioners had joined service after 30.06.2018, i.e. after the coming into force of the NPS, and had accepted its terms and conditions by furnishing undertakings at the time of joining. It was also observed that mere participation in a selection process or issuance of an appointment order does not create any vested right prior to actual joining.

4. Being aggrieved by the rejection orders, the appellant-petitioners once again approached the learned Single Judge by filing WP(C) No. 570 of 2023 and WP(C) No. 571 of 2023, seeking a direction upon the respondents to extend to them the benefit of the OPS. However, by Judgment and Order dated 25th July, 2024, the learned Single Judge dismissed the writ petitions. Aggrieved thereby, the appellant-petitioners have preferred the present appeal.

5. Heard Mr. P. Roy Barman, learned Sr. counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the appellants as well as Mr. S.M. Chakraborty, learned Advocate General, Mr. P. Gautam, learned Sr. G.A., Mr. Kohinoor N. Bhattacharjee, learned G.A., Mr. D. Sharm, learned Addl. G.A., and Ms. P. Chakraborty, learned Advocate appearing for the State-respondents.

6. Mr. Roy Barman, learned Senior Counsel appearing for the appellants, submit that the central issue before the learned Single Judge was whether the petitioners are to be governed by the OPS or the NPS. It is submitted that the NPS came into force on 1st July, 2018. At the time of

joining, the appellants–petitioners were required to sign undertakings opting for the NPS. However, such undertakings were not executed voluntarily but under compulsion, inasmuch as, without signing the same, the appellants–petitioners would not have been permitted to join their posts. Considering the scarcity of employment opportunities and the effort undertaken by the appellants in securing the posts, they were left with no real option and were compelled to sign the undertakings under duress.

On the said argument, learned Sr. Counsel relied upon **Para-13, 37 and 43** of the Judgment of the Hon’ble Supreme Court dated **3rd September, 2021** bearing **No.Civil Appeal No(s).3922-3925 of 2017** titled as **Somesh Thapliyal and anr.etc Vs. Vice Chancellor, H.N.B. Garhwal University and anr.** The same is produced here-in-under:-

“13. The appellants raised dispute by filing a protest petition but as already observed that they not being in the equal bargaining position were in the need of employment, left with no option but to sign on the dotted lines offered by the University at the time of employment.

37. From the narration of facts as being referred to supra, it clearly manifests that the appellants were appointed after going through the process of selection as contemplated under Part VI of the Act 1973 which indeed was an appointment on substantive basis and since the appellants were not in an equal bargaining position and were in the need of employment when the offer of appointment was made, left with no option but to accept such arbitrary conditions incorporated in the letter of appointment in treating it to be contractual for a limited period still recorded their protest while joining but no heed was paid. When they were allowed to continue by extending their services, they remained under the bonafide belief that as their appointment is being substantive in character, they will be made permanent/confirmed immediately after the permanent posts are sanctioned in the Department of Pharmaceutical Sciences but to their dismay, after an advertisement dated 29th August, 2011 came to be notified by the respondent Central University, no option was left with them but to approach the High Court by filing of a writ petition.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.”

6.1. Learned Senior Counsel appearing for the appellants further submit that the undertaking was not part of the Offer of Appointment issued to the appellants–petitioners on 30.06.2018. It was only at the stage of

posting that the requirement of furnishing such undertaking was imposed. The appellants–petitioners were categorically informed that unless the undertaking was signed, they would not be permitted to join their posts. Thus, after having already accepted their offers of appointment, the appellants–petitioners were compelled to furnish the undertaking at the time of posting. The undertaking itself was pre-drafted by the respondents, provided in a dotted-line format, leaving the appellants–petitioners with no choice but to sign it.

6.2. Learned Senior Counsel submits that it is a settled principle of law laid down by the Hon'ble Supreme Court that where the process of selection stands completed prior to the cut-off date of enforcement of the NPS, the appointees would be governed by the OPS, even if their formal joining takes place after the cut-off date. In the present case, the offers of appointment were issued to the appellants–petitioners on 30.06.2018, i.e., prior to the enforcement of the NPS on 01.07.2018. The subsequent joining after the cut-off date occurred solely due to administrative delay. Therefore, applying the settled principle of law as well as various circulars issued by the Central Government, the appellants–petitioners are entitled to be covered under the OPS. The undertakings obtained from them cannot defeat such entitlement as they were secured under duress and in circumstances where the appellants–petitioners had no bargaining power. In support of this contention, learned Senior Counsel placed reliance on the Judgment of the Hon'ble Delhi High Court in **WP(C) No.1358 of 2017**, titled as **Shyam Kumar Choudhury & Ors. vs. Union of India & Ors.**, decided on **09.04.2019**.

6.3. Learned Senior Counsel also placed reliance upon another Judgment of the Hon'ble Delhi High Court in **WP(C) No.2810 of 2016, Inspector Rajendra Singh & Ors. vs. Union of India & Ors.**, wherein relief was granted in circumstances identical to those of the present appellants–petitioners. The challenge carried against the said Judgment by

the Union of India in the form of a Special Leave Petition before the Hon'ble Supreme Court was dismissed by the Apex Court, thereby confirming the view of the High Court. Stating thus, the learned Senior Counsel prayed that the present appeals may be allowed.

7. On the other hand, Mr. S.M. Chakraborty, learned Advocate General appearing for the respondents, submits that the Notification dated 13.07.2018 issued by the Finance Department, Pension Cell, has not been challenged by the appellants–petitioners. The said Notification categorically provides that all employees joining service on or after 01.07.2018 shall be governed by the NPS. In the absence of any challenge to the said Notification, the subsequent actions of the respondents flowing there-from cannot be called into question. It is contended that the appellants–petitioners had the opportunity to challenge the Notification at the appropriate stage, but they chose not to do so.

7.1. The learned Advocate General further submits that the appellants–petitioners consciously signed the undertakings at the time of joining and remained silent for a considerable period thereafter. Only after several years, they raise representations, seeking to retract from their earlier acceptance. Once a candidate has signed a document forming part of the service conditions with full knowledge, he or she cannot subsequently backtrack from it. Such matters cannot be reopened on the basis of belated pleas.

7.2. The learned Advocate General submits that reliance is placed on ***Somesh Thapliyal & Anr. etc. vs. Vice Chancellor, H.N.B. Garhwal University & Anr(supra)***., by the learned Sr. counsel appearing for the appellants wherein, in paragraph 43, the Hon'ble Supreme Court held that *it is open to an employee to challenge service conditions if the same are not in conformity with statutory requirements*. However, in the present case, the appellants–petitioners have not challenged any statutory requirement. Instead, they merely contend that the undertakings were signed under duress.

According to the learned Advocate General, such a contention cannot be accepted within the principle laid down in **Somesh Thapliyal (supra)**, as the submissions of the appellants–petitioners are more in the nature of emotional pleas rather than legally sustainable arguments.

7.3. To strengthen his argument, learned Advocate General referred to **Para 45(iv)** of the Judgment of the 3(three) Judges' Bench of the Hon'ble Supreme Court dated **25th November, 2022** bearing No.**Civil Appeal Nos.6622-6623 of 2022** titled as **State of U.P. and ors. Vs. Virendra Kumar and ors.** The same is produced here-in-under:-

“45(iv) Those officers and employees of the Board who have accepted the benefit under the old scheme before 7th September 2012 after giving an undertaking in terms of the Office Order dated 16th January 2004 shall not be C.A. Nos.6622-6623 of 2022 etc. entitled to the benefit of the new pension scheme made applicable as per the notification dated 19th May 2009;”

8. Heard and perused the evidence on record.

9. This Court is of the considered view that the offer letters issued in 2018 were merely offers of appointment and not final appointments in themselves. The appellants subsequently accepted the said appointments and furnished undertakings in terms of the NPS. The plea that such undertakings were given under duress or coercion cannot be accepted. There is no material on record to substantiate the allegation of coercion, and it is not possible to assume that the appellants, who entered service with their eyes wide open, were unaware of the service conditions or the statutory scheme governing their employment.

10. It is further relevant that the appellants did not challenge the foundational Notification dated 13.07.2018, which categorically mandated that employees joining on or after 01.07.2018 would be governed by the NPS. In the absence of any challenge to the notification itself, the subsequent actions of the respondents flowing there-from cannot be questioned. The appellants consciously signed the undertakings and remained

silent for nearly four years, only raising their grievance in June, 2022 by way of representations, followed thereafter by writ petitions. Such belated and afterthought challenges, long after accepting the terms of service, cannot be permitted.

11. The argument of the learned Senior Counsel for the appellants that the undertakings were obtained under duress is more of an emotional plea rather than a legally sustainable contention. As rightly argued by the learned Advocate General, once the appellants voluntarily executed undertakings forming part of the service conditions, and without challenging either the Notification dated 13.07.2018 or the undertakings themselves, they cannot now backtrack from their own actions. The reliance placed on principles of “*duress*” or “*lack of bargaining power*” is misplaced in the facts of the case.

12. This Court also finds merit in the submission of the learned Advocate General that, in ***Somesh Thapliyal & Anr. vs. Vice Chancellor, H.N.B. Garhwal University & Anr.(supra)***, the Hon’ble Supreme Court clarified that an employee may challenge service conditions only if they are not in conformity with statutory requirements. In the present case, however, no such statutory violation has been demonstrated; rather, the appellant only relies upon an unsubstantiated plea of compulsion.

13. This Court further notes that in an earlier round of litigation, in the case of ***Sourav Datta Vs The State of Tripura and ors***, bearing No.WA No.156 of 2023 decided on 20.02.2024, similar claims had been rejected, and the Special Leave Petition before the Hon’ble Supreme Court was also dismissed. The issue thus stands concluded.

14. In light of the binding precedent of the ***Hon’ble Supreme Court*** Judgment in ***State of U.P. & Ors. vs. Virendra Kumar & Ors.(supra)*** and upon careful consideration of the submissions advanced, this Court finds no infirmity in the Judgment of the learned Single Judge.

15. Accordingly, the writ appeals stand dismissed. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

B. PALIT, J

DR. T. AMARNATH GOUD, J

Suhanjit

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