

**HIGH COURT OF TRIPURA
AGARTALA
WP(C)No.799 of 2023**

Smt. Jharna Das,
wife of Sri Ranjit Das,
resident of Gorurbandh,
P.O. Urmai, P.S. Sonamura,
District-Sepahijala Tripura

---- Petitioner (s)

Versus

1. The State of Tripura,
Represented by the Chief Secretary,
Government of Tripura, Agartala,
Civil Secretariat, P.O. Kunjaban, Pin-799006

2. The Secretary to the Government of Tripura,
Department of Social Welfare and Social Education,
Civil Secretariat, P.O. Kunjaban, Agartala, Pin-799006

3. Additional Secretary to the Government of Tripura,
Department of Social Welfare and Social Education,
Civil Secretariat, P.O. Kunjaban, Agartala, Pin-799006

4. The Secretary to the Government of Tripura,
Department of Finance Department, Civil Secretariat,
P.O. Kunjaban, Agartala, Pin-799006

5. The Director of Social Welfare and Social Education,
Government of Tripura, Abhoynagar, P.O. Abhoynagar,
Agartala, P.S. East Agartala, District-West Tripura, Pin-799005

6. Additional Director of Social Welfare and Social Education,
Government of Tripura, Abhoynagar, P.O. Abhoynagar, Agartala,
P.S. East Agartala, District-West Tripura, Pin-799005

7. Child Development Project Officer,
Government of Tripura, Melaghar NP ICDS Project,
Melaghar, Sepahijala District

8. Accountant General, Tripura,
Malancha Nibash, P.O. Kunjaban, P.S. East Agartala,
District-West Tripura

----Respondent(s)

For Petitioner (s)	:	Mr. Kundan Pandey, Adv.
For Respondent(s)	:	Mr. Bidyut Majumder, DSGI. Mr. Karnajit De, Addl. G.A.
Date of Hearing	:	16.04.2025
Date of Judgment & Order	:	25.04.2025
Whether fit for reporting :		YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

The present petitioner has filed this writ petition seeking the following reliefs :

(I) Issue Rule upon the Respondents to show cause as to why the Respondents should not transmit all records relating to the case of the Petitioner;

(II) As to why a writ in the nature of mandamus should not be issued quashing or setting aside the letter vide No.F.34(987)-DSWL/LA/2022/258(3) dated 04.08.2023 issued by respondent No.5 whereby the prayer of the petitioner for counting her past service rendered as a School Mother on a consolidated fixed pay w.e.f. 30.05.1990 to 01.10.2007 for the purpose of all retiral benefits was regretted;

(III) As to why a writ in the nature of mandamus should not be issued directing the Respondents to count the past service of the petitioner which was rendered as a School Mother on a consolidated fixed pay w.e.f. 30.05.1990 to 01.10.2007 for the purpose of all retiral benefits including Pension, Gratuity, etc. and release all pensionary benefits along with 12% interest per annum in favour of the petitioner after counting of her past service as School Mother;

(IV) As to why such other order/orders should not be passed so as to give full relief to the Petitioner and, upon causes shown, to make the Rule absolute;

(V) For this act of kindness your humble Petitioner, as in duty bound, shall ever pray;

[2] Heard Mr. Kundan Pandey, Learned counsel appearing on behalf of the petitioner and also heard Mr. Karnajit De, Learned Addl. G.A. appearing on behalf of the State-respondents.

[3] Before concluding the writ petition, let us discuss about the subject matter of the writ petition. According to the petitioner, she was appointed by a memo dated 13.07.1990 as a School Mother under the Directorate of Social Welfare & Social Education Department, Government of Tripura, Agartala on a consolidated fixed pay for a period of 12 months. In the said memo, it was mentioned that they are appointed against the newly created and sanctioned post vide Memo No.F.48(13-1)-SWE/PLAN/88 dated 14.12.1989 issued by the Department of Social Welfare and Social Education, Government of Tripura. Subsequently, the respondent No.6 by a memorandum vide No.F.3(3)-DSWE/ESTT/88(LOOSE) dated 30.07.1990 issued an offer of appointment to the petitioner to the post of School Mother [Annexure-1 & 2]. The Inspector, Social Welfare & Social Education, Melaghar, Tripura accepted the joining report of the petitioner along with others and the said Inspector issued a Memo on 25.07.1990 in respect of joining report of the petitioner. In the said memo, it was categorically stated that the date of joining of the petitioner to the post of School Mother was 25.07.1990 [Annexure-3].

[4] It was further submitted by the petitioner that after satisfactory service of the petitioner, the Respondent No.5 issued a memo vide No.F.3(3)DSWE/ESTT/2007/2517(158) dated 03.11.2007 whereby the service of the petitioner was regularized as a Group-D employee w.e.f. 01.10.2007 in the pay scale of Rs.2600-55-2985-60-2385-65-3545 as a School Mother [Annexure-4]. From the year 1990 till 31.12.2021 the petitioner served her department with complete honesty and integrity. The petitioner completed her whole service career with the satisfaction of her higher authorities and after attaining 60 years

of age the service of the petitioner was further extended for a period of 3 months w.e.f. 01.01.2022 to 31.03.2022 and the petitioner ultimately retired from service on 31.03.2022. Being aggrieved, the petitioner through her Learned counsel submitted an advocates notice before the respondents No.2, 5, 6 & 7 on 27.09.2022 and prayed for counting of her past service rendered as School Mother on a consolidated fixed pay w.e.f. 30.05.1990 to 10.10.2007 for the purpose of all retiral benefits including pension, Gratuity, etc. and release all pensionary benefits along with 12% interest per annum after counting her past service as School Mother within a period of 30 days from the date of receipt of the said notice. The said notice was duly received by the Department but no reply was given [Annexure-5]. Being aggrieved by non-cooperation of the Department, the petitioner filed the writ petition before this High Court vide WP(C)No.925 of 2022 praying for counting her past service as a School Mother on a consolidated fixed pay w.e.f. 30.05.1990 to 01.10.2007 for the purpose of all other benefits. The said writ petition was disposed of with the following observations [Annexure-6] :

"3. It is seen from the record that the petitioner herein has submitted an advocate notice dated 26.09.2022 through his advocate to the respondent agitating his grievance and the same is still pending.

4. Accordingly, without expressing any opinion on the merit of the case, this present writ petition is disposed of with a direction upon the respondents to decide the said representation made by the petitioner through his advocate dated 26.09.2022 in accordance with law within a period of 3(three) months from the date of receipt of copy of this order."

[5] The petitioner thereafter submitted a representation dated 14.06.2023 along with a copy of the judgment before the respondents No.2, 5, 7 & 8 and prayed for implementing the judgment of the High Court but no action was taken. Copy of the representation was annexed as Annexure-7.

It was further submitted that the representation dated 14.06.2023 was duly received by the respondents No.2, 5, 7 & 8 and the respondent No.8 issued a letter dated 05.07.2023 to the respondent No.5 and requested to transmit pertinent proposal to the respondent No.8 for necessary action. The said letter was annexed as Annexure-8. But thereafter, on 04.08.2023 the respondent No.5 issued a letter to the Learned counsel for the petitioner [Annexure-9]. She further submitted that a similar was case filed by one Smt. Mamta Rani Roy(Saha) before this High Court which was numbered as WP(C)No.77 of 2015 for counting her past service which she rendered as School Mother. The Hon'ble High Court allowed the writ petition in favour of said Smt. Mamta Rani Roy(Saha) with the following observation [Annexure-10] :

"11. It would also be pertinent to mention that the Central Government and the Government of Tripura have taken a decision that even half of the services rendered by an employee on daily wages shall be counted towards qualifying service. The person appointed on fixed pay basis is on a much better footing than a person appointed on daily wages and if half of the service rendered by a daily wages employee can be counted for determining his/her qualifying service, I see no reason why the full service rendered by a fixed pay employee should not be counted towards her qualifying service if this uninterrupted service is followed by regular service.

12. In view of the above discussion, the writ petition is allowed with costs assessed at Rs.5,000/- (rupees five thousand) and it is directed that the service rendered by the petitioner from the date of her joining as School Mother on fixed pay basis pursuant to the letter of appointment dated 19-07-1990 till her regularisation shall be added to her regular service from 01-10- 2007 till her superannuation on 03-11-2007 for calculating her pension and other retiral benefits. The State shall ensure that the pension is accordingly fixed and all retiral benefits be released in favour of the petitioner latest by 31st January, 2016 along with interest @ 9% per annum from the date of retirement of the petitioner, i.e. 30-06-2013 till payment/deposit of this amount."

[6] She further stated that in spite of rendering service over 30 years she had to retire without receiving any

pensionary benefits. It was further submitted that similarly situated persons filed writ petition vide No.WP(C)853 of 2017 and by a judgment dated 21.08.2017 the said benefit was granted. In another case vide WP(C)No.439 of 2020 similar relief was sought for and that was also allowed in favour of the petitioner. The petitioner also relied upon the judgment of Hon'ble Supreme Court of India in the case of **State of Himachal Pradesh & Anr. versus Sheela Devi** dated 07.08.2023 wherein the Hon'ble Apex Court observed that the past service as a contractual employee be taken into consideration. Hence, the petitioner filed the writ petition.

[7] The State-respondents contested the case by filing counter affidavit denying the entire assertions. In para Nos.5 to 6 of the counter affidavit the State-respondents made the following assertions :

"5. That, with regard to the statements made in paragraph 12 of the Writ Petition, I say that, the petitioner Smt. Jharna Das, had joined in the post of School Mother on consolidated fixed pay on 25.07.1990. She had been regularized in the post of School Mother w.e.f.01.10.2007. The Petitioner had retired from her service on superannuation on 31.03.2022 (with extension). It is a fact that at the time of retirement of the Petitioner, length of her regular service was 14 years 06 months, whereas minimum 10 years is required for entitlement of pension and pensionary benefits. So, she was entitled to get pension and other pensionary benefits and there is no rule or provision under the Govt. Of Tripura for counting of past service of School Mother who was on consolidated pay and had rendered regular service for minimum 10 years or above. Therefore, counting the past service from the date of her joining to the date of her regularization is not required for pension and other pensionary benefits and the petitioner is not entitled to what she prayed for in the writ petition as per existing rule of the State Government.

6. That, with regard to para 13 to 15 of the petition it is submitted that, it is a fact that Smt. Mamata Devi had filed a writ petition (Civil) No.77 of 2015 for counting her past service which was rendered as consolidated School Mother. Smt Mamata Devi was appointed as School Mother on consolidated fixed pay basis on 19.07.1990 and regularized on 3.11.2007. She retired from Government service on superannuation on 30.06.2013 and since Smt. Mamata Devi had not completed 10 years of service since her regular appointment in 2007, she was not entitled to get pension. The Hon'ble High

Court directed in its judgment and order dated 08.10.2015 to count her service as consolidated fixed pay for the purpose of pensionary benefits, for the same purpose and similarly situated persons writ petition (Civil) No.853 of 2017 and other connected writ petitions were filed in the Hon'ble High Court and again Hon'ble Court had directed to count their service as consolidated fixed pay for the purpose of pensionary benefits.

But in the instant case the petitioner Smt. Jharna Das was entitled to get pension and other pensionary benefits as she has completed 15 years of service since her regular appointment in 2007. So, the instant case is different to Smt. Mamata Devi's case and therefore, the claim of the petitioner for counting the past service since the date of her joining is not required for pension and other pensionary benefits as per existing rule or provision and therefore, it is prayed before the Hon'ble Court to dismiss the claim of the petitioner. Further, it is also stated that 6(six) Writ Appeals registered as Writ Appeal 135/2022, 136/2022, 137/2022, 141/2022, 61/2023 & 62/2023, have been pending in the Division Bench of Hon'ble High Court of Tripura which are also similarly situated."

[8] At the time of hearing, Learned counsel for the petitioner, Mr. K. Pandey drawn the attention of this Court that the case of the petitioner is covered by the Judgment of Smt. **Mamata Rani Roy(Saha) versus The State of Tripura** in WP(C)No.77 of 2015 [Annexure-10 of the writ petition] wherein the Division Bench of the High Court granted the benefit of past service. In para Nos.8 to 12 the Division Bench of this High Court made the following observations :

"8. This rule clearly lays down that qualifying services of a Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in officiating or in temporary capacity. The petitioner was appointed on contract basis on 19-07-1990 and she continued to work for 17 long years on temporary basis till her services were regularised in the year 2007.

9. Rule 14 of the CCS (Pension) Rules lays down the conditions subject to which her service qualifies. Under sub-rule (1) if the services of the Government servant are regulated by the Government, then the services have to be taken into consideration. The petitioner was working under the direct control of the Government and she was under the disciplinary control of the Government and, therefore, this condition is satisfied. The petitioner was being paid salary by the Government out of a fund administered by the State of Tripura and, therefore, qualifies for grant of pension.

10. It is urged on behalf of the State that the petitioner was in a non-pensionable establishment.

All employees of the Government have to be given benefits either under some pension funds or under the Provident Fund Scheme. There can be no employment under the Government who does not fall under either of the two beneficiary schemes. Either there should be an Employees Pension Scheme and in case, there is no such scheme, then the employee would fall within the ambit of the Pension Rules. Under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, every employer is required to frame a scheme for Employees Pension Scheme providing for superannuation pension, retiring pension or permanent total disablement pension. There has to be a pension fund. The State cannot have it both ways. It cannot claim that it is neither liable to pay under the Employees' Provident Funds Act nor is liable to pay pension.

11. It would also be pertinent to mention that the Central Government and the Government of Tripura have taken a decision that even half of the services rendered by an employee on daily wages shall be counted towards qualifying service. The person appointed on fixed pay basis is on a much better footing than a person appointed on daily wages and if half of the service rendered by a daily wages employee can be counted for determining his/her qualifying service, I see no reason why the full service rendered by a fixed pay employee should not be counted towards her qualifying service if this uninterrupted service is followed by regular service.

12. In view of the above discussion, the writ petition is allowed with costs assessed at Rs.5,000/- (rupees five thousand) and it is directed that the service rendered by the petitioner from the date of her joining as School Mother on fixed pay basis pursuant to the letter of appointment dated 19-07-1990 till her regularisation shall be added to her regular service from 01-10-2007 till her superannuation on 03-11-2007 for calculating her pension and other retiral benefits. The State shall ensure that the pension is accordingly fixed and all retiral benefits be released in favour of the petitioner latest by 31st January, 2016 along with interest @ 9% per annum from the date of retirement of the petitioner, i.e. 30-06-2013 till payment/deposit of this amount."

Referring the same Learned counsel submitted that since the case of the present petitioner is covered by the said judgment, so, a direction may be given to the State respondents to allow the benefit of past service as sought for by the petitioner.

[9] Learned counsel for the petitioner further submitted that the State Authority did not challenge the said judgment and thus the said judgment has attained finality. He also referred another judgment of the Division Bench of this High

Court passed in connection with Case No. W.A.135 of 2022, W.A. No.136 of 2022, W.A. No.137 of 2022, W.A. No.141 of 2022 wherein the Division Bench of this High Court in the last few paras made the following observations :

"This Court while deciding the issue of similarly situated School Mothers had passed so many judgments/orders wherein the respondents were directed to count the past service rendered by School Mothers irrespective of their nature of employment on contractual or temporary basis. In the case of Mamata Rani Roy(Saha) vs. State of Tripura and Ors. in WP(C) No.77 of 2015, a Division Bench of this Court was pleased to direct providing retiral benefits and/or pensionary benefits by adding the period of contractual service rendered by the petitioner prior to her regularization to the post.

We have also perused the judgment and order passed by the Division Bench of this Court in Mamata Rani Roy(Saha) (supra) confirming the order of the learned Single Judge directing to add the period of service they rendered on temporary basis or on fixed pay basis along with the period of their regular service for the purpose of granting pension and other retiral benefits.

This well-settled principle cannot be disputed by the State-appellant. The position of the writ petitioners/respondents is similar and identical to the facts of the case of Mamata Rani Roy(Saha) (supra).

In view of this, we find no merit in the above writ appeals. Accordingly, all the writ appeals stand dismissed."

[10] The Division Bench also at the time of disposal of the appeal filed by the State respondents referred the judgment of **Mamata Rani Roy(Saha)**(supra) and finally dismissed all the appeals filed by the State respondents. The said judgment of the Division Bench have also attained finality as because no further SLP is preferred by the State respondents. So, Learned counsel for the petitioner urged for allowing the petition filed by the petitioner.

[11] On the other hand, Mr. K. De, Learned Addl. G.A. appearing on behalf of the State-respondents submitted that in the case of **Smti. Mamata Roy (Saha)** (supra) she did not complete 10 years of service, so, the Hon'ble High Court gave the benefit to her. But here in the case at hand, since the

present petitioner has already completed 10 years of service so there is no question of considering her period of past service. Further he has submitted that the State has taken a concerned decision in the cases wherein the petitioner of the respective Departments have not completed their 10 years of service at the time of consideration of their pensionary benefits so, they will be given the same benefit but those who have completed more than 10 years of service they are/were not entitled to get the benefit of past service. He referred some of the orders of the Division Bench of the High Court passed in connection with W.A. No.25 of 2025 and W.A. No.18 of 2025.

[12] But on perusal of the same, it appears that those are not related to the case of said **Smti. Mamata Roy (Saha)** (supra) and the subsequent appeals W.A.136 of 2022 and W.A.135 of 2022 and others as mentioned above. Even, at the time of hearing of argument, Learned Addl. G.A. although submitted that the State has decided to prefer SLP before the Supreme Court but in this regard, no stay order or any other communication could be placed before this Court for staying further proceedings of this case. Since, the case of **Smti. Mamata Roy (Saha)** (supra) as discussed above and the subsequent appeals being numbered as W.A.135 of 2022 and others had been disposed of by order dated 04.07.2024 and no further challenge is made to the said judgment/order and Learned Addl. G.A. at the time of hearing of argument also was failed to satisfy the Court that the judgment of **Smti. Mamata Roy (Saha)** (supra) does not cover the case of the petitioner. As such, in the considered opinion of this Court the present petitioner is entitled to get the benefit, as prayed for.

[13] The writ petition is accordingly allowed. The respondent authority shall accordingly count the service rendered by the petitioner from the date of her joining as School Mother on consolidated fixed pay pursuant to the acknowledgment letter dated 13.07.1990 till her regularization be counted as her regular service on and from 25.07.1990 to 01.10.2007 till her superannuation on 31.03.2022 for calculating her pension and other retiral benefits. The respondent authority shall ensure that the pension is accordingly fixed and all retiral benefits be released in favour of the petitioner within a period of 4(four) months along with interest @ 7.5% per annum from the date of retirement of the petitioner till payment/deposit of the amount.

The writ petition is accordingly stands disposed of.

JUDGE

**SABYASACHI
BHATTACHAR
JEE**

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