

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.812 of 2024

Sri Sibul Paul,
S/o. Shri Kshitish Chandra Paul,
Resident of Manubazar, Sabroom, South Tripura.

.....Petitioner(s)

- V e r s u s -

1. The State of Tripura,

Represented by the Principal Secretary to the Government of Tripura, Secondary Education, Civil Secretariat, Capital Complex, Agartala.

2. The Director of Secondary Education,

Government of Tripura, Agartala, West Tripura.

..... Respondent(s)

For the Petitioner(s) : Mr. Sankar Kr. Deb, Sr. Advocate.
Mr. Saugat Datta, Advocate.

For the Respondent(s) : Mr. Haradhan Sarkar, Advocate.

Date of hearing and delivery : **10th July, 2025.**
of Judgment & Order

Whether fit for reporting : **NO**

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (Oral)

Heard Mr. Sankar Kr. Deb, learned senior counsel appearing for the petitioner and Mr. Haradhan Sarkar, learned counsel appearing for the respondents.

2. Mr. Deb, learned senior counsel submits that the petitioner, a graduate teacher (B.A.), posted at Sabroom English Medium Higher Secondary School, South Tripura, was transferred from his existing place of posting to Twikarma Twisa H.S. School, L.T. Valley, Dhalai, vide memorandum issued on 15.07.2021 (Annexure-1 to the writ petition). By said memorandum, he was also stand released w.e.f. 23.07.2021. Thereafter, he did not join his new place of posting for a considerable period, and on 28.03.2023, he submitted an application to the

respondent No.2 to allow him to join at his new place of posting, but he was not allowed to do so. Thereafter, respondent No.2 issued another memorandum dated 03.05.2023 (Annexure 3), directing him to explain within 15.06.2023 as to why he shall not be deemed to have resigned from Government service by invoking the provision of TSCS (Leave) (11th Amendment) Rules, 2013, read with notification bearing No.F.1(1)-FIN(G)/86 dated 20.06.2013 of the Finance Department and memorandum bearing No.F.20(1)-GA(P&T)/18(Part) dated 12.12.2018 of the GA(P&T) Department, for remaining in unauthorized absence for more than one year at a stretch (w.e.f. 23.07.2021 till the date of the issuance of the memorandum), failing which a termination letter would be issued to him.

3. The petitioner thereafter submitted a reply vide Annexure-4 on 25.05.2023, mainly stating that he had fallen sick on the night of 22.07.2021 and underwent treatment under a government medical attendant/practitioner on 23.07.2021 and as such, he could not join in his new place of posting and thereafter also the illness continued, and after recovery from such prolonged illness, even once he was attacked by some miscreants on 12.01.2022, for which a separate FIR bearing No.2022/SBM/002 under Sections 341/323/427/34 of Indian Penal Code was lodged at Sabroom P.S. According to him, after his recovery from the illness on 27.03.2023, he became fit to join and accordingly applied for allowing him to join to his place of posting.

4. On consideration of his reply, respondent No.2 thereafter referred him to appear before the Standing Medical Board, Agartala, AGMC & GBP Hospital vide memorandum dated 10.07.2023 (Annexure 5 to the writ petition), and accordingly, he appeared there. Certain papers containing advice of the Medical Officer in the OPD with pathological

reports are relied on by both the sides, under Annexure-6 and Annexure-R/1 in this regard. Learned senior counsel also refers to another memorandum dated 25.12.2023 under Annexure-9 whereby respondent No.2, upon examination of the entire facts and circumstances, treated the petitioner's absence as deemed resignation from Government service w.e.f. 23.07.2021, with the observation that he was absent from duty for more than one year at a stretch w.e.f. 23.07.2021 till date. The relevant paragraphs of the said memorandum are extracted hereunder:

"Therefore, after careful examination of the entire facts and circumstances, Sri Sibul Paul, G/T of Sabroom English Medium H.S. School, Sabroom, South Tripura is hereby treated as deemed to have resigned from the Govt. Service w.e.f. 23-07-2021 under TSCS (Leave) (11th Amendment) Rules, 2013 (i.e. as per Finance Department's Notification No.F.1(1)-FIN(G)/86, dated 20-06-2013) and as per General Administration (Personnel & Training) Department's Memorandum No.F.20(1)-GA(P&T)/18(Part), dated 12-12-2018 for remaining unauthorized absent from duty for more than 01 (one) year at a stretch w.e.f. 23-07-2021 to till date.

This has issued as per approval of the higher authority vide U.O.No.4903/CM/2023 dated, 16-10-2023."

Said memorandum is impugned herein.

5. In the said memorandum, it was also observed by respondent No.2 that the Chairman, Standing Medical Board, AGMC & GBP, Hospital, after careful observation of the petitioner and his relevant documents relating to his treatment, opined that the petitioner's absence for a period of 122 days was justified but remaining period of 490 days was unjustified. Challenging the said memorandum, the present writ petition has been filed.

6. Mr. Deb, learned senior counsel strenuously argues that the very basis or foundation of the decision of respondent No.2 was the report of the Standing Medical Board, but neither the said report of the said Medical Board was supplied to the petitioner, giving him any opportunity to be heard on it, nor was the said report is placed in the

record by the respondents. Therefore, the general presumption will be that there was no such medical report at all. Learned senior counsel, also refers to Rule 12 of Tripura State Civil Services (Leave) Rules, 1986 [For short- TSCS (Leave) Rules, 1986] as amended vide TSCS (Leave) (11th Amendment) Rules, 2013, which is extracted hereunder:

"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.

[Inserted by the Tripura State Civil Services (Leave) (11th Amendment) Rules, 2013, vide Finance Dept. notification No.F.1(1)-FIN(G)/86, dt. 20.06.2012][(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.]"

7. Learned senior counsel submits that by using the words absent from duty at a stretch for more than one year the department resorted to the provision of Sub-Rule 1(b) of Rule 12 though according to the said Sub-rule 1(b), action may be taken against a Government employee if he is absent from duty for a continuous period of 5(five) years, with or without leave and not for absence of only 1(one) year or so, and therefore, on that ground also the memorandum issued by respondent No.2 is illegal and *ultra vires*.

8. Mr. Sarkar, learned counsel, relies on the documents related to the examination of the petitioner in AGMC & GBP Hospital, Agartala, in the OPD, as placed under Annexure-R/1 and submits that the petitioner was absent for a period of 490 days without any justified ground for which in accordance with the provisions of Rule 12 of said

TSCS (Leave) Rules, 1986, respondent No.2 was justified in treating the absence of the petitioner to be deemed resignation and thereby terminating him from service.

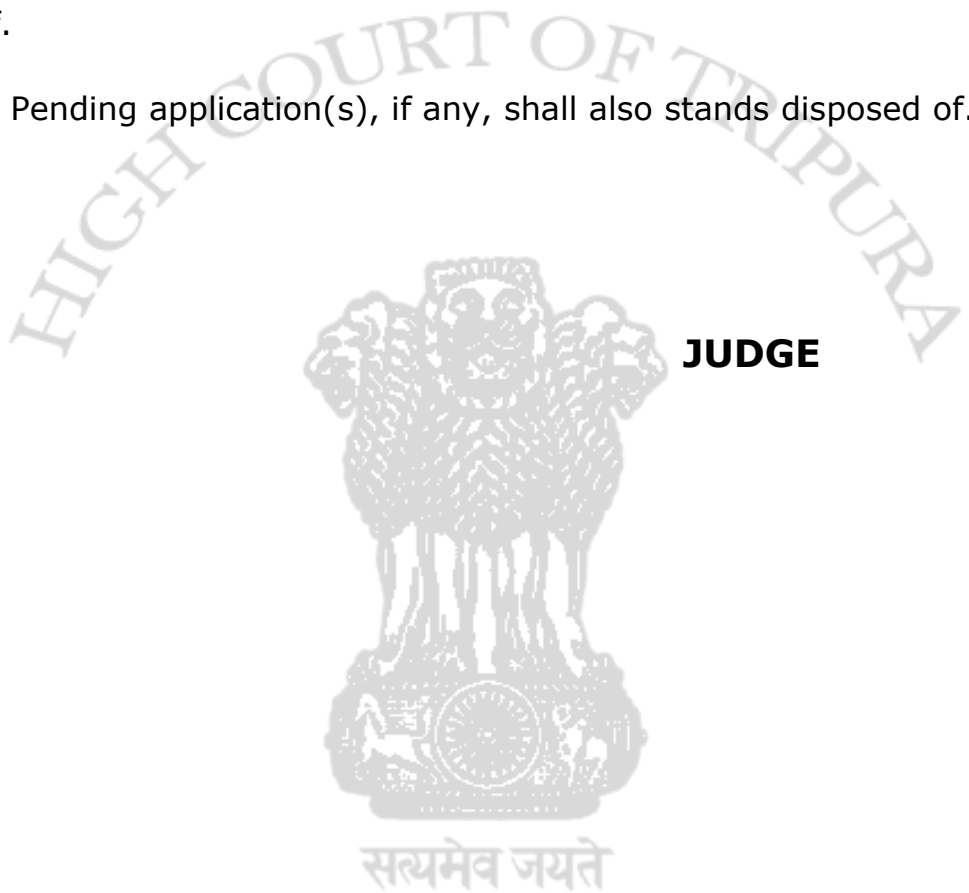
9. This Court has given due consideration to the submission of both sides and has also taken note of all the materials as placed in the record. On perusal of the medical papers placed under Annexure-6 and Annexure-R/1, nothing is found therein containing any opinion of the Standing Medical Board. No material has been placed by the respondents before the Court to justify their assertion that the petitioner's absence for total of 122 days w.e.f. 23.07.2021 to 21.08.2021 and again from 22.12.2021 to 23.03.2022 was justified and the remaining period of absence w.e.f. 22.08.2021 to 21.12.2021 and then from 24.03.2022 to 26.03.2023 i.e., the total period of absence of 490 days was unjustified as noted in the impugned memorandum. As already indicated above, no such material has been placed before this Court by the respondents to justify their such contention based on any such report issued by the medical board of AGMC & GBP, Agartala. Therefore, in the absence of or for withholding any such vital document which forms the basis of issuing the impugned memorandum by respondent No.2 terminating the petitioner from the service, the memorandum issued on 25.12.2023 (Annexure-9 to the writ petition) is liable to be quashed as *ultra vires* and illegal for want of any supporting basis.

10. In view of above discussion, the memorandum dated 25.12.2023 (Annexure-9 to the writ petition) issued by respondent No.2 is, accordingly, quashed. However, respondents are at liberty to decide the matter afresh within 04(four) weeks of receipt of the copy of this judgment, after furnishing copy of the report of Medical Board, if any, to

the petitioner and after giving him an opportunity of personal hearing, if he so desires. Needless to say, the petitioner will also have the liberty to raise all the contentions before the competent authority of the respondents, which are raised before this Court in this writ petition, apart from any other grounds which he intends to agitate.

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

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



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