

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.80 of 2025

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

.....Appellant(s);

Versus

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

.....Respondent(s)

For Appellant(s) : Mr. Dipankar Sarma, Addl. G.A.

For Respondent(s) : Mr. Purusuttam Roy Barman, Sr. Advocate,
Mr. Kawsik Nath, Advocate,
Ms. Aradhita Debbarma, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Order

19/01/2026

This Writ Appeal is preferred by the State of Tripura and others including the Tripura State Social Welfare Board challenging the judgment dt.10.03.2025 in WP(C) No.633/2024.

2. The respondent was appointed as Contingent Clerk-cum-Typist on a consolidated pay of Rs.700/- per month in the establishment of the Tripura State Social Welfare Board (appellant No.5) initially for a period of 89 days.

3. The appellants continued to appoint her in the said position by giving a break after the 89th day, and again re-employing her.

4. This practice continued upto 24.01.2011 when the respondent was offered by the appellant No.5 – Board a regular post of Lower Division Clerk in the said Board in the pay scale of Rs.5310-24000/- (PB-2) with Grade Pay of Rs.1800/- per month terming it to be an appointment on temporary basis liable for termination at any time by a month's notice on either side.

5. After having been appointed as the Lower Division Clerk, which post she joined on 01.02.2011, she retired on 31.01.2020.

6. On her retirement, the appellant No.5 – Board took a decision to allow pension taking into consideration of the previous service only from 12.12.2009, i.e. from the date of lifting the condition of break in service, which condition had been withdrawn by the State vide memorandum dt.31.07.2014.

7. However it was decided that the spell of broken service shall not be taken into account for determining the qualifying service for payment of pension. Thus, the spell of service of the petitioner/respondent herein from 31.12.1987 to 11.12.2009, which had been broken several times as per the condition of appointment, i.e. after each 89 days, was not counted for the purposes of pension.

8. The respondent therefore filed WP(C) No.633/2024 before this Court, and sought a direction to the appellants to count 50% of the service rendered by her with effect from 31.12.1987 till her regularization on 01.02.2011 along with regular service rendered by her from 01.02.2011 to 31.01.2020 for determining the qualifying service years rendered by her for

calculation of pension and other pensionary benefits, which had been rejected on 31.08.2024 by the respondents/appellants herein.

9. In the Writ Petition, the respondent had contended *inter alia* that in computing the qualifying service rendered by her for the purpose of pension and other pensionary benefits, 50% of the service rendered by her as Contingent Clerk with effect from 31.12.1987 till 31.01.2011 i.e. 12 years is also to be counted along with regular service rendered by her from 01.02.2011 to 31.01.2020 for determining the qualifying service rendered by her for the said purpose.

10. She alleged that 50% of the past service rendered by her as Contingent Clerk, had not been taken into consideration. She also alleged that in determining the regular monthly pension and other pensionary benefits payable to her, the appellants did not add 50% of service rendered by her as Contingent Clerk with effect from 31.12.1987 to 31.01.2011, and her pensionary benefits had been calculated and determined only on the basis of her regular service as Lower Division Clerk with effect from 01.02.2011 to 31.01.2020, and as a result thereof, she had been deprived of her actual pensionary benefits.

11. She relied on a memorandum dt.16.08.1978 issued by the Finance Department of the Government of Tripura which specifically permitted half the period of continuous service rendered by a Contingent employee and engaged on full time to be counted towards pension when followed by employment in regular pensionable service. This method had also been reiterated in subsequent memorandums dt.26.09.1979, dt.19.07.1982, and dt.25.02.2010.

12. The appellants, on the other hand, contended before the learned Single Judge that because there was an artificial break in service, the benefit of the above memorandums cannot be given to her for determining the qualifying service in connection with the calculation of pension and other retiral benefits.

13. The learned Single Judge, in the impugned judgment, rejected the contention of the appellants, and by placing reliance on the judgments of the Supreme Court in the case of *Ahalya A. Samtaney v. State of Maharashtra & others*¹ and also in the case of *Prem Singh v. State of Uttar Pradesh and Others*² held that the action of the appellants in giving artificial break of one day after every 89 days of service, is not proper as per Service Rules, and this method had been adopted by the appellants only to deprive the respondent of the retiral benefits due to her.

He held that the respondent cannot be deprived of the legitimate expectation of pension after serving the appellants, and the technical methods adopted by the appellants to deprive the respondent's right to pension and eligibility, cannot be appreciated. Periodical one day breakage and discontinuity cannot be said as a breakage in service.

He, therefore, allowed the Writ Petition, and directed the appellants to treat 50% of the service rendered by the respondent as a Contingent Worker taking into consideration the regularization of service and fixing the entitlement of her retirement benefits in accordance with law, and set aside the proceeding dt.31.08.2024 passed by the third appellant.

14. Challenging the same, this Appeal has been preferred by the appellants.

¹ (2018) 9 SCC 92

² (2019) 10 SCC 516

15. Counsel for the appellants contended that learned Single Judge erred in allowing the Writ Petition filed by the respondent, and he also erred in holding that giving of the break in service after every 89 days' of service, is not correct ; that it was permitted by the then existing Rules, and she had worked on the said basis as Contingent Clerk-cum-Typist from 31.12.1987 till the said condition of break in service was withdrawn on 31.07.2014 with effect from 12.12.2009; and the respondent had thus fulfilled only 9(nine) years in the post of Lower Division Clerk as regular service when counted from 01.02.2011, and unless she completes ten years of service, she is not qualified to get higher pension. According to him, the spell of broken service cannot be taken into account for determining the qualifying service for payment of pension.

16. He also stated that there is no statute permitting condonation of the interrupted period, and therefore she is not entitled to pension by taking into account her past service as a Contingent Clerk-cum-Typist.

17. Counsel for appellants is unable to explain under what principle of law, the respondent had been appointed on 31.12.1987, and continued till 24.01.2011 by giving her artificial breaks after every 89 days.

18. The Supreme Court in several cases had deprecated the practice of the Government or Government instrumentalities giving artificial breaks in service of employees to deny them continuity of service.

19. In *Rattan Lal & others v. State of Haryana & Others*³, the Supreme Court held:

³ (1985) 4 SCC 43 : 1985 SCC (L&S) 938, at page 43 :

“1. In all these petitions the common question which arises for decision is whether it is open to the State Government to appoint teachers on an ad hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacation, or earlier, to appoint them again on an ad hoc basis at the commencement of next academic year and to terminate their services before the commencement of the succeeding summer vacation or earlier and to continue to do so year after year. A substantial number of such ad hoc appointments are made in the existing vacancies which have remained unfilled for three to four years. It is the duty of the State Government to take steps to appoint teachers in those vacancies in accordance with the rules as early as possible. The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time on an ad hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after a break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad hoc basis is very large indeed. If the teachers had been appointed regularly, they would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period

and to all other privileges such as casual leave, medical leave, maternity leave etc. available to all the Government servants. These benefits are denied to these ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary “hiring and firing” policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of “ad hocism” followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer.

2. We, therefore, direct the State Government to take immediate steps to fill up in accordance with the relevant rules the vacancies in which teachers appointed on an ad hoc basis are now working and to allow all those teachers who are now holding these posts on ad hoc basis to remain in those posts till the vacancies are duly filled up. The teachers who are now working on such ad hoc basis if they

have the prescribed qualification may also apply for being appointed regularly in those posts. The State Government may also consider sympathetically the question of relaxing the qualification of maximum age prescribed for appointment to those posts in the case of those who have been victims of this system of “ad hoc” appointments. If any of the petitioners in these petitions has under any existing rule acquired the right to be treated as a regularly appointed teacher, his case shall be considered by the State Government and an appropriate order may be passed in his case.

3. We strongly deprecate the policy of the State Government under which “ad hoc” teachers are denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These “ad hoc” teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave, shall also be granted such leave in accordance with the rules.” (emphasis supplied)

20. This issue also fell for consideration before the Supreme Court in the case of **Ahalya A. Samtaney** (1 supra), and the Supreme Court deprecated the action of the respondents therein in giving artificial break of one day in order to deprive the appellant therein of the benefit of pay protection.

The Supreme Court referred to the judgment of the Bombay High Court in the case of *Pervez H. Lentin v. St. Xavier's College*⁴ where the Bombay High Court had deprecated such artificial breaks to deny to an employee benefits such as pension, and the Bombay High Court had highlighted the insecurity which is created in the mind of employees when such artificial breaks in service are given.

21. Similar view has also been taken by the Supreme Court in *Prem Singh* (2 supra).

In that case also, service as a Work-Charged employee was not counted by the State of Uttar Pradesh for computation of qualifying service for the purpose of retirement benefits such as pension.

The Supreme Court observed that the very concept of Work-Charged employment had been misused by offering employment on exploitative terms for the work which is regular and perennial in nature like in the instant case.

The Supreme Court held in the said case that if after an employee had put in substantial period of service on Work-Charged basis and thereafter his services were regularized, the period spent by such employee in the Work-Charged establishment, has to be counted towards qualifying service, and the service rendered by them in the Work-Charged establishment cannot be treated as if there was no service rendered at all by the employee.

22. When an employee like the respondent has been made to work as a Contingent Clerk-cum-Typist from 31.12.1987 till she was made a Lower Division Clerk on 24.01.2011 by giving artificial breaks in every 89 days, it has

⁴ 2005 SCC OnLine Bom 1741

to be inferred that the so called artificial break was given deliberately by misusing the appellants' powers, and exploiting the respondent. Such artificial breaks in service have therefore to be ignored.

23. We therefore agree with the reasoning given by the learned Single Judge in granting relief to the respondent herein in the Writ Petition.

24. In this view of the matter, we do not find any merit in the contentions of the appellants in this Writ Appeal. It is accordingly dismissed with cost of Rs.15,000/- to be paid by the appellants to the respondent within 8(eight) weeks.

25. Pending application(s), if any, shall stand disposed of.

(BISWAJIT PALIT, J)

(M.S. RAMACHANDRA RAO, CJ)



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