

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WA No.180 of 2022

Sri Basanta Sen,

Son of Late Priyabandhu Sen,
Resident of Village- Ramnagar Road No.8,
Nivedita Palli, P.O.- Agartala,
P.S.- West Agartala, Sub-Division-Agartala,
District- West Tripura, Pin-799002

..... Petitioner-Appellant(s)

V E R S U S

1. The State of Tripura,

Represented by the Secretary & Commissioner
To the Department of Finance, Government of Tripura,
Having his office at New Secretariat Complex,
Gurkhabasti, Agartala,
P.O.- Kinjaban, P.S.- New Capital Complex,
Sub-Division- Sadar, District- West Tripura.

2. The Secretary & Commissioner,

Department of Finance, Government of Tripura,
Having his office at New Secretariat Complex,
Gurkhabasti, Agartala,
P.O.- Kunjaban, P.S.-New Capital Complex,
Sub-Division- Sadar, District- West Tripura.

3. The Secretary & Commissioner,

Panchayat Department, Government of Tripura,
Having its office at New Secretariat Complex,
Gurkhabasti, Agartala,
P.O.- Kunjaban, P.S.- New Capital Complex,
Sub-Division- Sadar, District- West Tripura.

In compliance with the Hon'ble Court's order dated 07.01.2026
Respondent No.4 has been impleaded as follows:

4. Tripura Public Service Commission, Agartala.

..... Respondent(s)

For Appellant(s)	:	Mr. Somik Deb, Sr. Advocate Ms. Adwitiya Chakraborty, Advocate
For Respondent(s)	:	Mr. Mangal Debbarma, Addl. GA. Mr. Kundan Pandey, Advocate
Date of hearing and delivery of judgment	:	28.01.2026
Whether fit for reporting	:	Yes

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

JUDGMENT & ORDER (ORAL)

(M.S. Ramachandra Rao, C.J.)

1) This Writ Appeal is preferred against the judgment dt.01.08.2022 of the learned Single Judge in WP(C) No.634 of 2021.

The background facts:

2) The undisputed facts are that by an appointment order dt.14.09.1989 the appellant was appointed to the post of Panchayat Extension Officer in the office of the Directorate of Panchayat on purely temporary and on ad hoc basis subject to confirmation by the Tripura Public Service Commission (for short 'TPSC') on appearance by the appellant before it for necessary examination on call.

3) According to letter dt.18.10.2010 (Annexure R-10) filed by the respondents, on the basis of the requisition from the Directorate of Panchayat, the TPSC had issued advertisement in 1997 inviting applications from eligible candidates for selection against 28 vacancies to the post of Panchayat Extension Officer. The said letter recorded that the appellant was also asked to submit application to the TPSC to appear in the examination for selection to the post of Panchayat Extension Officer, that the appellant did apply and also sat for the examination conducted by the TPSC. The said letter also states that it was ascertained that the appellant's name was not indicated in the select list.

4) But in spite of the same, the appellant continued to serve as Panchayat Extension Officer till he retired from the said post on 31.08.2017.

5) The appellant gave certain representations to the respondents praying for regularization of his service along with pensionary benefits and pension but did not succeed in the same.

WP(C) No.604/2019:

6) Therefore, he filed WP(C) No.604/2019 in this High Court and on 11.07.2019 this court disposed of the Writ Petition directing the respondents to consider his case for regularization and also for payment of pension and other retiral benefits. Liberty was given to the appellant to file an exhaustive representation to the Director of Panchayat and Secretary to the Department of Panchayat, Government of Tripura within 15 days.

7) The appellant made a representation on 14.11.2019 to the Director of Panchayat, Government of Tripura praying for consideration of regularization of his service and for grant of pension and other retiral benefits.

8) Thereafter, the Additional Director of Panchayat, Government of Tripura prepared a note (Annexure R- 15) opining that the appellant shall be deemed to have become permanent for serving the Government for a long period of 27 years and he should be treated as a permanent employee entitled to pensionary benefits. This was forwarded to the Chief Minister's Secretariat by the Additional Director of Panchayat.

The order dt.14.8.2020 impugned in the Writ Petition:

9) But, on 14.08.2020 the impugned order was passed noting that the Law Department had recommended that the appellant be given the retiral benefits, but the Finance Department and the General Administration (P&T)

Department have not agreed to regularizing appellant's services and paying him pension and other retiral benefits on the ground that the appellant had failed to appear before the TPSC for the selection process which would have resulted in the regularization of his service.

WP(C) No. 634 of 2021:

10) Thus, the effort of the appellant did not succeed and therefore, he was forced to file WP(C) No. 634 of 2021 in this court.

11) In that Writ Petition, the appellant had sought regularization of his service from the date of his initial appointment and to grant pension to him along with arrears thereof, death-cum-retirement gratuity, provident fund, leave encashment and all other pensionary benefits with penal interest after setting aside the memorandum dt.14.08.2020 issued by the Director of Panchayat, Government of Tripura.

12) The appellant, inter alia, contended in the Writ Petition that the respondents could not have refused regularization of his service and sought payment of retiral benefits to him. He also contended that his initial appointment as a temporary/ad hoc/ contractual government servant was only irregular and not illegal, and since he continued in service uninterruptedly for a period of 10 years of service or more without any order of the court, he is entitled for regularization of service and also for retiral benefits.

13) Both the Government of Tripura as well as TPSC put up a plea that the initial appointment of the appellant was made without following the established procedure, that he later failed to appear before the TPSC for the selection process and so the Writ Petition should be dismissed.

14) The learned Single Judge, in the impugned judgment, accepted the plea of the respondents and held that as appellant did not appear before the TPSC for examination and the post could only have been filled up by direct recruitment or by promotion. He held that the appellant was not qualified for the post of Panchayat Extension Officer. He also held that the claim of the appellant is barred by delay and laches.

The instant Writ Appeal:

15) Challenging the same, this Appeal is filed by the appellant.

16) Heard learned counsel for the appellant as well as the State Government and the TPSC.

17) We may point out that the plea of the respondents before the learned Single Judge that the appellant did not appear before the TPSC in the examination conducted by it is a false plea as Annexure R-10 letter dt.18.10.2001 addressed by the Director of Panchayat, Government of Tripura to the Secretary, Tripura Public Service Commission, Agartala specifically states that the appellant applied to the TPSC and also sat for the examination in 1997.

18) Though the said letter stated that it could be ascertained from the select list that the appellant did not figure therein, it is undisputed that even so, the appellant was allowed to continue to work for 20 more years till he retired from service on 31.08.2017.

19) The question is “is it mandatory for the TPSC to approve the appointment of the appellant in view of the stipulation in the appointment letter dt.14.9.1989?”

20) It is not in dispute that the post of Panchayat Extension Officer is a Class-III, non-selection post and as per the applicable Recruitment Rules, possession of prescribed qualifications was sufficient, and the said rule specifically records the Tripura Public Service Commission (Exemption from Consultation) Regulations, 1973 (for short 'Regulation') would apply.

21) Clause (3) of Art.320 of the Constitution of India states:

“Art.320.

(1)..

(2)...

(3) *The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—*

(a)on all matters relating to methods of recruitment to civil services and for civil posts;

(b)on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c)on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

....”

22) As per Regulation 3 of the Tripura Public Service Commission (Exemption from Consultation) Regulations, 1973 , it was not necessary for the State Government to consult the Tripura Public Service Commission in regard to any of the matters mentioned in sub-clause (a) & (b) of Clause-(3) of Article 320 of the Constitution in the case of services and posts specified in

the schedule for the Regulation (Regulation-3). In the schedule to the said regulations, serial No.7 mentions all Class-III posts in the Secretariat/ Department and allied offices except certain other posts mentioned therein. There is no dispute that the post of Panchayat Extension Officer is also a Class III post. It is not referred to in the exceptions and so, it was not necessary for the State Government to consult the TPSC regarding appellant's appointment. Regulation 4 also stated that it was not necessary to consult the Commission in regard to the selection for appointment to a Class-III post in the State service.

23) Counsel for appellant also places reliance on the reports of the Supreme Court in ***Ram Gopal Chaturvedi vs. State of Madhya Pradesh***¹ and ***G.S. Lamba & Ors vs. Union of India & Ors***².

24) In ***Ram Gopal Chaturvedi (1 supra)*** it was held that consultation with the State Public Service Commission though provided in the said Article is not mandatory for taking disciplinary action though Article 320(3)(c) states that such consultation “shall” be necessary; and failure to consult the MPSC will not vitiate any decision taken in that regard. Reference was made to the judgment of the Supreme Court in ***State of UP Vs. Manbodhan Lal Srivastava***³ where similar view was taken and the said judgment was followed.

25) In ***G.S. Lamba & Ors (2 supra)***, it was reiterated that though the applicable rule required consultation with the UPSC before quota rules in promotion were relaxed, such consultation is not mandatory.

¹ 1969 (2) SCC 24

² (1985) 2 SCC 604

³ AIR 1957 SC 912

“27. It was however contended that it is not permissible to infer that promotions in excess of quota were given by relaxing the quota rule because the posts in integrated Grade II and III were within the purview of the Union Public Service Commission and the proviso to Rule 29(a) mandates that the power to relax is hedged in with a condition that it can be done after consultation with the Commission, and there is nothing to show that the Commission was ever consulted. Undoubtedly, the proviso to Rule 29(a) requires that the controlling authority cannot relax any of the provisions of the rules in respect of posts which are within the purview of the Union Public Service Commission unless after consultation with the Commission. It was submitted that nothing is placed on the record by the petitioners to show that power to relax the quota rule was exercised after consultation with the Union Public Service Commission. Assuming that there was no consultation, would the exercise of power to relax be vitiated and the appointments made in relaxation of the mandatory quota rule would be ab initio invalid?

*... ..Coming home in **State of U.P. v. Manbodhan Lal Srivastav**(*supra* 3) a Constitution Bench of this Court specifically held that where consultation with the Public Service Commission is provided as required by Article 320(3)(c) of the Constitution such provision is not mandatory and they do not confer any rights on public servants so that the absence of consultation or irregularity in consultation does not afford him a cause of action in a court of law. There are number of subsequent decisions to which our attention was called reiterating the same principle. Therefore assuming there was failure to consult the Union Public Service Commission before exercising the power to relax the mandatory quota rule and further assuming that the posts in integrated Grade II and III were within the purview of the Union Public Service*

*Commission and accepting for the time being that the Commission was not consulted before the power to relax the rule was exercised yet the action taken would not be vitiated nor would it furnish any help to Union of India which itself cannot take any advantage of its failure to consult the Commission. Therefore it can be safely stated that the enormous departure from the quota rule year to year permits an inference that the departure was in exercise of the power of relaxing the quota rule conferred on the controlling authority. Once there is power to relax the mandatory quota rule, the appointments made in excess of the quota from any given source would not be illegal or invalid but would be valid and legal as held by this Court in **N.K. Chauhan v. State of Gujarat**¹¹. Therefore the promotion of the promotees was regular and legal both on account of the fact that it was made to meet the exigencies of service in relaxation of the mandatory quota rule and to substantive vacancies in service.”*

26) The above decision relates to sub-clause (a) of Clause (3) of Art.320 dealing with methods of recruitment to Civil Services and Civil Posts, and it is thus not necessary to consult the Public Service Commission in that regard for making appointments or promotions to civil posts.

27) The counsel from the respondents do not deny that the recruitment rules make the post of the Panchayat Extension Officer a non-selection post and refer to the TPSC (Exemption from Consultation) Regulations, 1973 in serial No.13 of the said rule dealing with Panchayat Extension Officer. They also do not deny that as per Regulation-3 of the said regulations the post of Panchayat Extension Officer being a Class-III post, consultation with the Public Service Commission is not necessary.

28) They also are unable to refute the legal position in the judgments cited by the counsel for the appellant referred to above.

29) So as per the regulations and also the above decisions, it was not necessary for the State to consult the TPSC in regard to appointment of appellant for the class III post of Panchayat Extension Officer.

30) When the statutory Rule permits making of the recruitment to post of Panchayat Extension officer on basis of possession of qualifications prescribed therein and do not mention about the appointee appearing for any test conducted by the TPSC, it was not permissible for the respondents to mention in the appellant's appointment order the condition that the appellant should appear before the TPSC for necessary examination on call. A requirement not mentioned in the Rules could not have been introduced by the respondents in the letter of appointment dt.14.9.1989 issued to the respondents.

31) Though the appellant did sit for the exam conducted by the TPSC and did not find mention in the select list, the respondents did not terminate his appointment in 1997 probably for the above said reason and allowed him to continue in the post for 20 more years till he retired on 31.8.2017. Even confirmation of his appointment by TPSC was not insisted by the respondents for the same reason. Moreover it is not as if the respondents at any point of time found that he did not perform his services as Panchayat extension Officer to their satisfaction during this period.

32) Therefore, it has to be held that the mention of the requirement of the appellant's appointment on 14.09.1989 being subject to confirmation by the TPSC, and the TPSC not confirming his appointment cannot deprive the

appellant of the benefit of regularization of the service after he has rendered almost 28 years of service.

33) Also it may be that the appointment order dt.14.09.1989 of the appellant states that he was appointed to the post of Panchayat Extension Officer in the office of the Directorate of Panchayat on purely *temporary* and on *ad hoc basis*. This was not changed till he retired from service on 31.8.2017 i.e for almost 28 years.

34) Having appointed the appellant to the post of Panchayat Extension Officer on 14.09.1989 and having continued till 31.08.2017, for almost 28 years, it is not permissible for the respondents to contend that the appellant's appointment as Panchayat Extension Officer is only *temporary or ad hoc*.

35) As held by the Supreme Court in ***Rudra Kumar Sain & Ors. Vs. Union of India & Ors***⁴, , a person, who possesses the requisite qualification for being appointed a particular post and continues in the post for a fairly long period, cannot be held to be holder of an *ad hoc* post. So the respondents are precluded from contending that the appellant's appointment was only temporary or ad hoc and so he was not entitled to get regularized.

36) In ***State of Gujrat & Ors. Vs. Talsibhai Dhanjibhai Patel***⁵ [SLP(C) 1109 of 2022] the Supreme Court held as under:-

“It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to content that as the services rendered by the respondent are ad-hok, he is not entitled to pension/pensionary

⁴ (2000) 8 SCC 25

⁵ 2022 SCC ONLINE SC 2004

benefit. The State cannot be permitted to take the benefit of its own wrong. To take that the Services continuously for 30 years and thereafter to content that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand.

In the present case, the High court has not committed any error in directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years service.”

37) Thus, the Supreme Court found fault with the State for taking the services of the respondent therein as an ad hoc employee for thirty years and then denying to the said respondent pensionary benefits. It held that the State cannot be permitted to take benefit of its own wrong. The same logic applies in the instant case as well.

38) Similarly, in ***Union of India Rep by Government of Puducherry & Anr. Vs. K Velajagan & Ors⁶***. [SLP Civil No.2868 of 2018] dated 04.02.2025, the Supreme Court directed regularization of persons working from 2005 as lecturers though the UPSC had rejected the request for regularization. It upheld the decision of the High Court which directed regularization of the respondents therein without any involvement of the UPSC.

39) We respectfully follow the above decisions and hold that the appellant was entitled to relief of regularization from the date of his appointment for the limited purpose to enable him to get retirement benefits.

⁶ 2025 SCC ONLINE SC 837

40) It appears to us that the learned Single Judge was swayed by the false allegation leveled by the respondents against the appellant that he did not appear before the TPSC for examination.

41) The Single Judge also erred in holding that the appellant is not qualified for the post of Panchayat Extension Officer when there is no such pleading by the respondents in their counter affidavit.

42) In our opinion, it was not permissible for the respondents to continue the appellant for almost 28 years in service without regularizing the service only as an excuse to deny the pension and other pensionary benefits. The injustice done to the appellant at least as regards the denial of pensionary benefits requires this Court to reject the false and technical submissions of the respondents since he has moved the Court in 2019 first and then again in 2021 after his claim for pension and pensionary benefits was turned down.

43) The ground of laches mentioned in the order of learned Single Judge, in our opinion, is also not sustainable because only when his pensionary benefits were denied, he sought regularization to claim them after his retirement in 31.8.2017.

44) Also laches it is not always a ground to deny relief to a litigant particularly when the State had acted unconscionably and arbitrarily.

45) In *Sukh Dutt Ratra v. State of H.P.*⁷ the Supreme Court explained in the following manner:

“18. ... This Court in a much earlier case — *Maharashtra SRTC v. Balwant Regular Motor Service*⁸, held : (AIR pp. 335-36, para 11)

⁷ (2022) 7 SCC 508

⁸ AIR 1969 SC 329

“11. ... ‘Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy’.”

19. The facts of the present case reveal that the State has, in a clandestine and arbitrary manner, actively tried to limit disbursement of compensation as required by law, only to those for which it was specifically prodded by the courts, rather than to all those who are entitled. This arbitrary action, which is also violative of the appellants’ prevailing Article 31 right (at the time of cause of action), undoubtedly warranted consideration, and intervention by the High Court, under its Article 226 jurisdiction.”

46) In *Basanti Prasad v. Bihar School Examination Board*⁹ it was held:

“21. In Vallabh Glass Works Ltd. v. Union of India⁶ it was observed: (SCC p. 368, para 9)

“9. ... While there are different periods of limitation prescribed for the institution of different kinds of suits by the Limitation Act, 1963, there is no such period prescribed by law in respect of petitions filed under Article 226 of the Constitution. Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable. This rule, however, cannot be a rigid formula. There may be cases where even a delay of a shorter period may be considered to be sufficient to refuse relief in a petition under Article 226 of the Constitution. There may also be cases where there may be circumstances which may persuade the court to grant relief even though the petition may have been filed beyond the period of limitation prescribed for a suit. Each case has to be judged on its own facts and circumstances touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite party or to the general public, etc.”

22. We do not think it necessary to burden this judgment with reference to various decisions of this Court, where it has been emphasised time and again, that, where there is inordinate and unexplained delay and third-party rights are created in the

⁹ (2009) 6 SCC 791

intervening period, the High Court would decline to interfere. However, if the delay is properly explained, and if the third-party rights are not going to be affected, the High Court may entertain the petition and consider the case of the aggrieved person on merits.”

47) Therefore, the judgment dt. 01.08.2022 of the learned Single Judge in WP(C) No.634 of 2021 is set aside; the Writ Petition [WP(C) No.634 of 2021] is allowed; the memorandum dt. 14.08.2020 issued by the Director of Panchayat, Government of Tripura is set aside; and the respondents are directed to regularize the services of the appellant forthwith from the date of his appointment and pay him pension and all other retiral benefits claimed w.e.f 31.8.2017 with interest at 7% pa from the said date till the date of actual payment. This exercise shall be completed within three months from today.

48) The Writ Appeal accordingly stands allowed. Pending application(s), if any, stands disposed of.

(BISWAJIT PALIT, J)

(M.S. RAMACHANDRA RAO, CJ)

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