

THE HIGH COURT OF TRIPURA

AGARTALA

WP(C) 218 OF 2011

- 1. Smt. Sabita Choudhury,**
W/o Sri Samir Chakraborty,
Resident of Ramthakur Road extension,
Town Pratapgarh, P.O.- Agartala-799001,
P.S.-East Agartala, Dist- West Tripura.
- 2. Smt. Namita Kar (Banik),**
W/o Sri Ajit Kumar Banik,
Resident of Dhaleswar Road No.4,
P.O. Dhaleswar, Agartala-799007,
P.S.-East Agartala, Dist. West Tripura.
- 3. Smt. Malina Chakraborty,**
D/o Lt. Dharendra Chandra Chakraborty,
Resident of A.D. Nagar Road No.12,
P.O.- A.D.Nagar, Agartala-799003,
P.S. West Agartala, Dist. West Tripura.
- 4. Smt. Pratima Debbarma,**
W/o Sri Umesh Chandra Saha,
Resident of Krishnanagar, Bijoy Kumar Chowmuhan Road,
P.O. Agartala-799001, P.S. West Agartala,
Dist. West Tripura.
- 5. Smt. Kana Sarkar (Deb),**
W/o Sri Jiban Chandra Sarkar,
Resident of Office Tilla, P.O. & P.S. Bishalgarh,
Dist. West Tripura.

..... ***Petitioners.***

- Vrs -

- 1. The State of Tripura,**
Represented by the Principal Secretary to the
Govt. of Tripura, Social Welfare & Social Education Dept.,
Civil Secretariat, Capital Complex, Agartala,
P.O. Kunjaban-799006, P.S. East Agartala,
Dist. West Tripura.
- 2. The Secretary to the Govt. of Tripura,**
Finance Dept., Civil Secretariat, Capital Complex,
Agartala, P.O. Kunjaban-799006, P.S. East Agartala,
Dist. West Tripura.
- 3. The Director,**
Social Welfare and Social Education Dept.,
Govt. of Tripura, Abhoynagar, Agartala-799005,
Dist. West Tripura.

4. Tripura State Social Welfare Advisory Board,

Represented by the secretary,
Tripura State Social Welfare Advisory Board,
Agartala-799001, Dist. West Tripura.

5. Government of India,

Ministry of Human Resource Development,
Sastri Bhavan, New Delhi-11001.

6. The Central Social Welfare Board,

Samaaj Kalyan Bhavan,
B-12, Kutab Institutional Area,
New Delhi 110 016.

..... **Respondents.**

BEFORE

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

HON'BLE MR. JUSTICE S.C. DAS

For the Petitioner : **Mr. D.K.Biswas & Mr. G.K. Nama**
Advocates.

For the respondents : **Mr. P.K. Biswas, Asstt. S.G.,**
Mrs. A. S. Lodh, Addl. G.A.,
Mr. N. Majumder, Adv.
Mr. P. Majumder, Adv.

Date of hearing & : **14.01.2015.**
Delivery of judgment
and order.

Whether fit for : **YES**
Reporting

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

By means of this writ petition, the petitioners who admittedly were engaged as employees in the Border Area Projects by the Tripura State Social Welfare Advisory Board, claim that they are entitled to pension in accordance with the decision taken by the Union of India as well as the State of Tripura and they also pray that the respondents be directed to release pension in favour of the petitioners.

2. Briefly stated, the facts relevant for disposal of the case are that there were many projects which were being run by the Social Welfare Boards of the States. These included the Border Area Projects, Welfare Extension Projects and Demonstration Projects etc. All these projects were started in the 1960's. Persons like the petitioners were recruited by the Social Welfare Board for doing the work of the projects. The Social Welfare Boards are totally funded by the State Govt. or the Union Govt. and are definitely 'State' within the meaning of Article 12 of the Constitution of India.

3. On 19th August, 1989 a communication was sent by the Secretary of the Tripura State Social Welfare Advisory Board to the Chairman of all the Border Area Projects which reads as follows:-

"TRIPURA STATE SOCIAL WELFARE ADVISORY
BOARD: AGARTALA.

No.F.22(8)85

Dated, Agartala,
The 19th Aug' 89.

To
The Chairmen,
All Border Area Projects,

Sub:- Extension of Retirement Benefit to the Employees of the Border Area Projects in Tripura.

Sir/Madam,

I am directed to say that since both the Central Social Welfare Board, New-Delhi and the Govt. of Tripura have been pleased to extend the retirement benefits in the shape of Pensionary and Gratuity etc. benefit to the Employees of the Border Area Projects in Tripura in the ratio 2:1 respectively w.e.f. 1-04-88, the employees of the Border Area Projects who were in Service as on 31-03-88 may, therefore be allowed to opt between the 2(two) sets of retirement benefits viz Contributory Provident Fund scheme and the Pension and Gratuity scheme. The employees of the Border Area Projects who entered into the service on or after 1-4-88 will automatically be guided by the Pension and Gratuity benefit scheme as referred to above.

I am, therefore, to request you kindly to obtain Option from the employees concerned who were in service as on 31-3-88 between one of the abovementioned two sets of retirement benefit scheme within one month from the date of receipt of this letter and the option so exercised by them may please be furnished to this State Board forthwith.

A specimen copy of the Option Form is enclosed herewith.

Yours faithfully,

Enclo: As stated

*Sd/-
(B.C.ROY)
SECRETARY”*

4. A bare perusal of this letter shows that the Central Social Welfare Board, New Delhi as well as the Govt. of Tripura had taken a decision to extend the benefit of grant of retiral benefits in the shape of pension, gratuity etc. to all the employees of the Border Area Projects in Tripura. It had also been decided that those employees who had been employed in service prior to 31.03.1988 would have to opt whether they wanted to get benefit of the pension and gratuity or would continue to get the benefit of Contributory Provident Fund. In this letter, it was also clearly stated that the Central Social Welfare Board and the Govt. of Tripura would bear the financial burden in the ratio of 2:1.

5. On 21.06.2000, the Govt. of Tripura issued a notification whereby it approved the extension of the revised pension, gratuity and other pensionary benefits to the employees of the Tripura State Social Welfare Advisory Board including the staff working in the Border Area Projects run by the Tripura State Social Welfare Advisory Board. Therefore, on this date, the State of Tripura took a conscious decision that it was extended the benefit of the revised pension scheme whereby the pensions have been revised to the employees of the Border Area Projects.

6. It is not disputed that the petitioner opted for getting pension and gratuity in terms of the letter dated 19th August, 1989. The petitioners have retired in the year 2009 and 2010.

7. The main dispute appears to be between the State and the Central Govt. The grievance of the State is that since the Centre has stopped funding the State to the extent of 2/3rd, therefore, the State is not in a financial position to give pension to the employees. As far as the Union of India is concerned, it has taken the stand that for the last almost two decades it had been impressing upon the State Govt. to close all the projects and absorb the employees of the Border Area Projects in the State Govt. and that a decision had been conveyed to the State of Tripura informing it that no funding will be given in respect of these Projects w.e.f. 31.03.2005. We fail to understand why in a dispute between the Union of India and the State Govt., the poor employees should suffer? Why should they be crushed like grain between two millstones over which they have no power or control? In a Social Welfare State we expect both the State and the Union Govt. to be considerate to the employees who have given their life time serving these Projects. It is not disputed that a conscious decision was taken to grant pensionary benefits to these employees. How can the Govt. now turn around and say that the employees are not Govt. employees and are therefore, not entitled to pension.

8. The decision, which we have referred to above, which was taken as far back as 19th August, 1989 was a clear cut decision that the employees of these Projects would be entitled to pensionary benefits and gratuity. We are shocked by the stand of the State that these employees, not being Government employees are not entitled to the benefit of pension. How the funds have to be arranged, is for

the State to decide. The State cannot wash its hands of the matter and take up a totally illogical plea that these employees not being Government servants are not entitled to pension. We, therefore, have no hesitation in coming to the conclusion that the petitioners and all other similarly situated employees of the Tripura State Social Welfare Board are entitled to pension in accordance with the decision of 1989.

9. The next question is who is to fund this pension? With regard to this, we may make reference to the first letter of the Central Govt. which clearly indicates that the Central Board was to finance 2/3rd of the pensionary benefits. However, we may also make reference to the letter dated July 8, 1997 sent by the Govt. of India to the Govt. of Tripura wherein in the year 1997 the State of Tripura was advised by the Central Govt. to integrate the various Centers being run under the Projects of Integrated Child Development Scheme (for short, ICDS) into the departments of Health etc. The State of Tripura was also informed that as far as the State of Punjab and Uttar Pradesh are concerned, they had already absorbed these employees in the State Govt. Thereafter on 31st December, 2004 another letter was written by the Secretary, Govt. of India, Ministry of Human Resource Development which reads as follows:-

“REVA NAYYAR
SECRETARY
Tel:23383586, telefax:23381495
E-mail:secy.wcd@sb.nic.in

GOVERNMENT OF INDIA
MINISTRY OF HUMAN RESOURCE
DEVELOPMENT
(DEPARTMENT OF WOMEN & CHILD
DEVELOPMENT)
SHASTRI BHAWAN, NEW DELHI-110 001
Website: <http://www.wcd.nic.in>

D.O.No. 12-1/2001-CSWB

December, 31, 2004

Dear

Kindly refer to my D.O. letter of even number dated 21.09.2004 regarding phasing out of the Border Area Projects, Welfare Extension Projects and Demonstration Projects and to absorb the project employees in on-going State Government programmes especially in ICDS. I have also written to the State Secretaries in charge of Women and Child Development vide my letter dated 16.11.2004 for the same. As the decision of phasing out the above projects was taken in the meeting of Committee of Secretaries held on 28.04.2004 with reference to the recommendations of the Expenditure Reforms Commission, I had clearly indicated in my letter dated 16.11.2004 with reference to the recommendations of the Expenditure Reforms Commission, I had clearly indicated in my letter dated 16.11.2004 with reference to the recommendations of the Expenditure Reforms Commission, I had clearly indicated in my letter dated 16.11.2004 that any vacancy in the ICDS should be filled up first from these project employees and outside candidates should be recruited only after the project employees are fully adjusted/absorbed. I have not yet received any positive response from your State.

2. A decision has now been taken that Central Social Welfare Board will stop meeting its share towards these Projects after 31.03.2005. In the circumstances either the Projects are to be closed and the employees to be declared surplus or the employees are absorbed in ICDS or similar type of State Government programmes. I have reviewed the status report of the ICDS projects as on 31.03.2004 and found that a number of vacancies are there in the existing ICDS projects in your State. In addition, new ICDS projects are to be sanctioned in your State. Thus a substantial number of posts of different categories will be available against which the project employees could be adjusted.

3. I, therefore, would like to request you to kindly give personal attention to this subject and make arrangements to close down the above projects and adjust/absorb the project employees in the ongoing State Government programmes or ICDS positively by 31.03.2005 failing which we will have to face litigations and other administrative problems as the Central Social Welfare Board won't be meeting its share after 31.03.2005.

4. With best wishes for a Happy New year,

Yours sincerely,
Sd/-
(Reva Nayyar)

To

Chief Secretaries of the States of 1) Andhra Pradesh, 2) Assam, 3) Bihar, 4) Gujarat, 5) Haryana, 6) Himachal Pradesh, 7) Jammu & Kashmir, 8) Karnataka, 9) Madhya Pradesh, 10) Manipur, 11) Meghalaya, 12) Mizoram, 13) Nagaland, 14) Orissa, 15) Punjab, 16) Rajasthan, 17) Delhi, 18) Lakshadweep, 19) Chattisgarh, 20) Jharkhan, 21) Arunachal Pradesh, 22) Sikkim, 23) Tripura, 24) U.P., 25) W.B., 26) A & N Island.

Copy for information and necessary action to:

- i. State Secretaries in charge of WCD of the above States.
- ii. JS(ICDS) & DS(ICDS), DWCD- for information and necessary action.
- iii. Executive Director, CSWB- for information and necessary follow-up action.

(Reva Nayyar)”

10. A perusal of this letter shows that the State had been advised time and again to phase out the Border Area Projects and the Central Govt. had taken a decision that w.e.f. 31.03.2005 it shall not meet any expenses towards these Projects. It had also clearly stated that in these circumstances, either the Projects are to be closed and the employees to be declared surplus or the employees should be absorbed by the State Govt. in the ICDS or other programmes. The State was also informed by the Central Government that the Central Govt. had sanctioned a number of Projects under the ICDS and these Projects were being funded by the Central Govt. and many posts were being created under these Projects where these employees could be absorbed.

11. On the contrary the State took a conscious decision that the staff working under the Border Area Projects shall be continue to work under the State Social Welfare Board and on the retirement of the employees the posts shall stand abolished.

12. The State pleading lack of finances has stated that it is unable to pay pension since the Union of India has not contributed its 2/3rd share for the grant of pension. The petitioners earlier filed WP(C) No. 48 of 2011 before the Gauhati High Court, Agartala Bench and this petition was disposed of without decision on merits

by directing the petitioners to make representation to the respondent Nos. 3 and 4 who are to dispose of the representation by a speaking order. This representation has been disposed of and the only reasoning given is as follows:-

“Whereas the petitioners were not Government employees and they were not covered by the Pensionable Rules and were appointed/engaged under Central Government Scheme. The Central Government has discontinued their contribution.

In view of the above and limitation of financial resources faced by the State Government, request of the petitioners has been considered but has not been agreed to by the State Government.”

13. To say the least, the decision shows total non application of mind. The authority which has taken this decision has not even referred to the letter of August, 1989 wherein the State Govt. had also agreed to the proposal to grant pension to the employees. Merely because these employees are not Government employees is not a ground to deny pension to them if the same was payable to them under the decision taken on 19th August, 1989.

14. From the facts narrated above and the discussion hereinabove, it is more than apparent that the petitioners are entitled to pension. As far as the funding is concerned, we are clearly of the opinion that the Union of India cannot avoid its liability prior to 31.03.2005. All dues prior to 31.03.2005 will have to be paid by the Union of India. As far as the dues thereafter are concerned, whether they relate to pension, gratuity or any other amount it shall be the responsibility of the State of Tripura to pay the same because the Central Govt. had clearly written to the State of Tripura to either declare these employees surplus or to absorb

them in the other departments of the State. In the affidavit-in-opposition filed by the State, there is not even a whisper as to what effort the State took in this regard to either absorb the employees or to declare them surplus. Once the Central Govt. had clearly given its decision that too after protracted correspondence right from the year 1997, the State of Tripura during this period from 1997 till 2005 could have thought about the welfare of the employees and then a decision to absorb them in the State Govt. where they would have been entitled to pension from the State Govt. Therefore, the State Govt. cannot shirk its responsibility to pay pension to the employees.

15. In this view of the matter, we allow the writ petition and direct that the State of Tripura shall pay to the petitioners and all similarly situated employees their pension and gratuity latest by 30th June, 2015. Since there was a dispute between the State of Tripura and Union of India, we refrain from awarding interest for the past but direct that in case the retiral benefits are not paid by 30th June, 2015 then the amount of pensionary benefits shall carry interest @12% per annum from the date when they fell due till payment of the amount.

16. The writ petition accordingly stands disposed of.

JUDGE

CHIEF JUSTICE