IN THE HIGH COURT OF TRIPURA
A G A R T A L A

W.P.(C) No.466 of 2012

W.P.(C) No.497 of 2012

W.P(C) No.498 of 2012

W.P(C) No.499 of 2012

In W.P.(C) No.466 of 2012

Petitioners:

1. **Sri Rabindra Debbarma,**
son of late Purnamanik Debbarma, Nandannagar, P.O. Kunjaban, West Tripura District, Agartala

2. **Sri Chanmoni Sinha,**
son of late Parikshit Sinha,
Rajbari, P.O.Dharmanagar,
North Tripura District

3. **Sri Sajal Kanti Datta,**
son of late Gopendra Nath Datta,
resident of Ramnagar, Road No.2,
P.O. Ramnagar, Agartala,
West Tripura District,

4. **Smt. Jyotsna Rani Das,**
wife of late Motilal Das,
resident of Gakulnagar,
P.O Gakulnagar

By Advocate :

Mr. C.S. Sinha, Advocate

-V E R S U S-

Respondents:

1. **The State of Tripura,**
represented by the Secretary, Government of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, West Tripura District, PIN: 799006

2. **The Secretary**, **Finance Department**
Government of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, West Tripura District, PIN:799006

3. **The Director General of Police,**
Tripura, P.O. Agartala, West Tripura District, PIN: 799001

4. **The Joint Secretary,**
Finance Department, Govt. of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, West Tripura District, PIN:799006

By Advocate :

Mr. J. Majumder, Advocate

In W.P.(C) No.497 of 2012

Petitioner:

Md. Eyakub Ali,
son of late Rakman Ali,
resident of Sakaibari,
P.O. & P.S. Dharmanagar,
North Tripura District

By Advocate :

Mr. C. S. Sinha, Advocate

-V E R S U S-

Respondents:

1. **The State of Tripura,**
represented by the Secretary, Finance Department, Government of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, West Tripura District, PIN: 799006

2. **The Secretary**, **Finance Department**
Government of Tripura, New Secretariat Complex,
P.O. Kunjaban, Agartala,
West Tripura District, PIN:799006

3. **The District & Session Judge,**
P.O. Kailashahar, District: North Tripura,
presently Unokoti

4. The Joint Secretary,
Finance Department, Govt. of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, West Tripura District, PIN:799006

By Advocate :

Mr. Samarjit Bhattacharjee, Advocate

In W.P.(C) No.498 of 2012

Petitioner:

Smt. Latika Biswas (Deb),
wife of Sri Parimal Chandra Deb,
resident of Sakaibari, P.O. & P.S. Dharmanagar, North Tripura District

By Advocate :

Mr. C.S. Sinha, Advocate

-V E R S U S-

Respondents:

1. The State of Tripura,
represented by the Secretary, Land Records & Settlement Department, Government of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, West Tripura District, PIN: 799006

2. The Secretary, Finance Department
Government of Tripura, New Secretariat Complex,
P.O. Kunjaban, Agartala,
West Tripura District, PIN:799006

3. The Director,
Land Records & Settlement,
Palace Compound, P.O. Agartala,
West Tripura, PIN: 799001

4. The Joint Secretary,
Finance Department, Govt. of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, West Tripura District, PIN:799006

By Advocate :

Mr. B. Datta, Advocate

In W.P.(C) No.499 of 2012

Petitioners:

1. **Sri Dulal Chakraborti,**
son of late Nagendra Kumar Chakraborti, Ramnagar, Bye Lane-2, P.O. Ramnagar, Agartala, District: West Tripura

2. **Sri Bijoy Sarma,**
son of late Barindra Sarma,
resident of Tilthai(East),
P.O. Tilthai, Dharmanagar,
North Tripura

By Advocate :

Mr. C.S. Sinha, Advocate

-V E R S U S-

Respondents:

1. **The State of Tripura,**
represented by the Secretary, Education Department, Government of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, West Tripura District, PIN: 799006

2. **The Secretary**, **Finance Department**
Government of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, West Tripura District, PIN:799006

3. **The Director of School Education,**
P.O. Agartala, District: West Tripura, PIN: 799006

4. **The Joint Secretary,**
Finance Department, Govt. of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, West Tripura District, PIN:799006

By Advocate :
Mr. J. Majumder, Advocate

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing	:	04.12.2015
Date of delivery of Judgment and order	:	**08.12.2015**
Whether fit for reporting	:	**No**

JUDGMENT & ORDER

All these writ petitions being W.P.(C) No.466 of 2012, W.P.(C) No.497 of 2012, W.P.(C) No.498 of 2012 and W.P.(C) No.499 of 2015 are clustered for disposal by a common judgment inasmuch as a common question of law wades through these writ petitions.

[2] The admitted position of fact is that all the writ petitioners have retired from service on and from 31.03.2012 when the notification under No.F.8(2)/FIN(G)/2012 dated 31.03.2012 was issued in exercise of the power conferred by proviso to Article 309 of the Constitution of India increasing the retirement age from 58 years to 60 years for the State Government employees. The increase in age of superannuation would apply to all those State Government employees who would complete 58 years of age on or after 1st April, 2012. It has been categorically noted in the said notification dated 31.03.2012 as under:

> **"This shall take effect from 1st day of April, 2012 and be applicable in cases of State Government employees retiring on or after that date.**
>
> **Cases in which State Government employees who are already on**

> **extension would retire on completion of the period of such extension of service.”**

[3] All the writ petitioners after their retirement were in the extension of service for 3(three) months from the respective date of retirement. These facts are not in dispute. The controversy is around whether the persons who are in extension of service can avail the benefit of the notification dated 31.03.2012 and whether the Government employees, borne in Group-A,B & C, who retired on 31.03.2012 would get the benefit of the said notification or not?

[4] Mr. C.S. Sinha, learned counsel appearing for the petitioners has submitted that those employees who are in the extension of service would be entitled to get the benefit of the notification dated 31.03.2012 and they shall be allowed to work for another two years inasmuch as the period of superannuation has been extended to 60 years for those categories of employees. It is to be noted that the age of superannuation of the Group-D employees is 60 years from before. Mr. Sinha, learned counsel has referred a decision of the Gauhati High Court in **Sri Dwijdas Chakraborty vs. The State of Tripura and others** (judgment and order dated 08.11.2011 in Writ Appeal No.40 of 2011) where it has been held that 'extending' means lengthening out of time previously fixed. It clearly follows that word ‘extended’ means extension of a pre-existing benefit.

[5] From the other side, Mr. J. Majumder, learned State counsel, Mr. B. Dutta, learned State counsel and Mr. Samarjit Bhattacharji, learned State counsel appearing for the respondents have contended that the case of **Sri Dwijdas Chakraborty vs. The State of Tripura and others** cannot have any application inasmuch as the notification dated 31.03.2012 is well qualified by the provisions as to its effects. The said notification cannot be compared with the amendment carried out in Rule 27 of the Tripura State Rifles (Discipline, Control, Service conditions etc.) Rules, 1986 prescribing 52 years as the age of superannuation for the rank holders of Naik, increasing thereby the age of superannuation by 2(two) years from 50 to 52 years. No provision was laid down there while amending the said rule to give a concrete meaning for prospective operation of the said rule. In contrast, in the notification dated 31.03.2012 provision has been laid that the said notification dated 31.03.2012 shall take effect only from 1st April, 2012 and be applicable in cases of the State Government employees retiring on or after the date. Therefore the effective date is 01.04.2012 and the days thereafter, not before it. The notification dated 31.03.2012 cannot come within the day of 01.04.2012. Moreover, the second proviso to FR 56(a) provides that:

> **"Provided further that a Government servant who has attained the age of fifty-eight years or before the first day on May, 1998 and is on extension in service, shall retire from the service on expiry of his extended period of service."**

This proviso is preceded by the first proviso to FR 56(a) which reads as under:

> **"Provided that a Government servant whose date of birth is the first of a month shall retire from service on the <u>afternoon of the last day of the preceding month on attaining the age of sixty years</u>."**

[6] The notification dated 31.03.2012 has accommodated the similar provisions and as such, who are supposed to retire on 31.03.2012 or before on attaining the age of 58 years, they would not get the benefit of the notification dated 31.03.2012.

[7] Mr. C.S. Sinha, learned counsel appearing for the petitioners has submitted that such cut off date is unreasonable. This Court is unable accept that analogy as the cut off date in this case is in the prospective and it has not affected any vested right or did not extend any right to a group of employees similarly circumstanced that of the petitioners. By exercise of the powers under proviso to Article 309 of the Constitution of India, the Government is within its bounds to frame prospective law giving benefits to its employees and that does not jeopardise any right of other employees. The notification dated 31.03.2012 has been applied to all categories of employees but from a certain day. Therefore, the cut off date cannot be termed unreasonable. That apart, in setting up a cut off date, the domain of the executive, to a larger extent, is insulated as those are closely related to the economic condition, financial constrains, many other administrative considerations and attending circumstances. The apex court in **Govt. of A.P. v. N. Subbarayudu,** reported in **(2008) 14 SCC 702**, while considering a challenge to the cut off date fixed for entitlement of pension to the teachers on the revised age of superannuation, observed as under:

> **"5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary."**

[8] This Court does not find any element of discrimination or arbitrariness in the notification dated 31.03.2012. Having held so, all these writ petitions are dismissed leaving the parties to bear their own costs.

JUDGE

Sujay