

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.406 OF 2010

Sri Bhupendra Narayan Roy,
S/O Late Upendra Chandra Roy,
Resident of village-Ujan abhoynagar,
P.O. Abhoynagar, P.S. East Agartala,
District-West Tripura.

..... *Petitioner*

- *Vs* -

1. The State of Tripura, Agartala,
(represented by the Chief Secretary to the
Government of Tripura),
Civil Secretariat, Capital Complex,
P.O. Kunjaban, Agartala.

2. The Secretary to the
Government of Tripura,
Education(Higher) Department,
Civil Secretariat,
Capital Complex, P.O. Kunjaban,
Agartala.

3. The Director of Higher Education,
Government of Tripura,
P.O. Agartala, West Tripura.

..... *Respondents*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. B. Das, Sr. Advocate
Mr. D. Chakraborty, Advocate

For the respondents : Mr. S. Chakraborty, Addl. G.A.

Date of hearing and
delivery of Judgment
& order : **17.06.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER.(ORAL)

Heard learned senior counsel, Mr. B. Das, assisted by learned counsel, Mr. D. Chakraborty for the petitioner and learned Addl. G.A., Mr. S. Chakraborty for the State respondents.

2. The petitioner, while was in service as a Class-IV employee under the Education Department of the Government of Tripura, was involved in a criminal case and since he was in custody in connection with the criminal case, he was placed under suspension for the period from 06.07.1970 to 07.04.1988. On revocation of suspension, he joined duties on 08.04.1988. In the criminal case he was found guilty and he suffered sentence during the period of suspension. He retired from service on 31.05.2007. The State respondents issued Memo.No.F.9(232)-DHE/C&G/08 dated 27.10.2009(*Annexure-B* to the writ petition) asking the petitioner to show cause as to why the period of suspension from 06.07.1970 to 07.04.1988 should not be treated as nonqualified for pension. The petitioner submitted his reply stating that the notice was misconceived and no such notice under Rule 9 of CCS (Pension) Rules or Rule 19 of CCS (CC&A) Rules, 1965 can be issued against him and therefore no action can be taken against him. The State respondents thereafter issued order dated 16.04.2010(*Annexure-D* to the writ petition) holding that the period of suspension from 06.07.1970 to 07.04.1988 will be treated as non-qualifying for the purpose of calculating pension and

pensionary benefits. Challenging the order the present writ petition is filed contending that the order is unsustainable and is liable to be set aside and quashed and that the petitioner is entitled to service benefits for the period of suspension.

3. Learned senior counsel, Mr. Das has submitted that the criminal case was instituted against the petitioner in the year 1970 and the trial also concluded in 1973. The petitioner was under suspension from 06.07.1970 to 07.04.1988 and the suspension order was revoked on 26.03.1988. But at that time no action was taken by the respondents against the petitioner in respect of the period of suspension as well as regarding his service. So, after his retirement the respondents cannot proceed against him for the alleged criminal case which ended in the year 1973. The show cause notice and the order issued by the State respondents amounts to disciplinary action which is not permissible under the CCS (Pension) Rules, 1972 or under the CCS (CC&A) Rules, 1965.

4. Learned Addl. G.A., Mr. Chakraborty has submitted that it is an admitted position that the petitioner was involved in a criminal case and he was held guilty and was punished in the criminal case. He suffered sentence. He was under suspension for the period from 06.07.1970 to 07.04.1988. His suspension was withdrawn and he was allowed to join the duties but the period of suspension was not regularised. When the pension proposal went to the office of the Accountant General it was noticed that the period

of suspension was not regularised and therefore it was sent back and the State respondents, therefore, in exercise of its inherent power passed the order treating the suspension period as non-qualifying for pensionary benefits. No disciplinary proceeding was initiated against him and he was simply asked to show cause and thereafter the impugned order was passed. There is nothing wrong in the order passed by the State respondents and the writ petition should be dismissed.

5. It would appear from Memo. dated 27.10.2009(*Annexure-B* to the writ petition) that the petitioner was asked to show cause as to why the period of suspension should not be treated as nonqualified for pension in exercise of the powers conferred under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 and Rule 19 of CCS (CC&A) Rules, 1965. It is an admitted position that the criminal proceeding was initiated against the petitioner in the year 1970 and ended in the year 1973. The petitioner was under suspension from 06.07.1970 to 07.04.1988 and he joined the duties on 08.04.1988 on revocation of his suspension by order dated 26.03.1988. He retired from service on 31.05.2007. The provision of Rule 9 of CCS (Pension) Rules, 1972 is applicable to a retired Government employee. Disciplinary action can be initiated against a retired employee for an event which took place not beyond four years from the date of suspension. Rule 19 deals with the power of the disciplinary authority in respect of a Government employee while in service. So neither Rule 9 of CCS (Pension)

Rules, 1972 nor Rule 19 of CCS (CCA) Rules, 1965 were applicable in the case of the petitioner for initiating action.

6. It is an admitted fact that the petitioner was under suspension for the period from 06.07.1970 to 07.04.1988 and his suspension period was not regularised by the authority while the petitioner was in service. The departmental authority was supposed to deal with the period of suspension during the period of service of the petitioner after revocation of his suspension. His suspension was revoked in the year 1988 and he retired in the year 2007 and the departmental authority did not take any action during such long span of time. The petitioner also was bound and under obligation to approach the departmental authority for regularising his period of suspension but he did not do so and remained silent. The period of suspension must be regularised to determine the pension and pensionary benefits of the petitioner. The departmental authority is/was bound to pass appropriate order regarding the period of suspension.

7. The order passed by the departmental authority cannot be said to be an order imposing punishment after retirement but it is simply an order regularising the period of suspension and cannot be termed as an order of punishment. Since the petitioner was under suspension and was involved in a criminal case, the period of suspension has to be regularized by the authority and it has been regularised stating that the period shall be treated as non-qualified

for pension, cannot be faulted and, therefore, I find no justification at all to interfere in the order issued by State-respondents and consequently the writ petition is found to be devoid of any merit and accordingly stands dismissed.

8. Parties to bear their own cost.

JUDGE