

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**WP(C) 77 OF 2015**

Smti. Mamata Rani Roy (Saha)  
Alias Mamata Roy,  
W/O. Indra Bhusan Roy,  
C/O. Samar Roy,  
Of Old Kalibari Lane, Krishnanagar,  
Agartala, West Tripura,  
P.O.-Agartala.

..... **Petitioner.**

**- V e r s u s -**

1. The State of Tripura,  
Represented by its Secretary Cum Commissioner,  
Department of Social Welfare and Social Education,  
Government of Tripura,  
New Capital Complex, P.O.-Kunjaban,  
Agartala, West Tripura.
2. The Director,  
Department of Social Welfare and Social Education,  
Government of Tripura,  
Abhoynagar, Agartala,  
P.O. Abhoynagar.
3. The Principal Secretary,  
Finance Department,  
Government of Tripura,  
New Capital Complex,  
Agartala, West Tripura.
4. The Child Development Project Officer,  
Agartala-2 ICDS Project,  
Abhoynagar, West Tripura.
5. The Senior Accounts Officer,  
Indian Audit and Accounts Department,  
Office of the Accountant General (A & E),  
Kunjaban, Tripura, Agartala.

..... **Respondents.**

**BEFORE**  
**HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**  
**HON'BLE MR. JUSTICE U.B. SAHA**

|                            |                                 |
|----------------------------|---------------------------------|
| For the petitioner         | : Ms. R. Purkayastha, Advocate. |
| For the respondents 1 to 4 | : Mr. T.D. Majumder, G.A.       |
| For the respondent No.5    | : Mr. B. Majumder, CGC.         |

Date of hearing : 24.09.2015.

Date of judgment : 08.10.2015.

Whether fit for reporting : **YES.**

### **JUDGMENT & ORDER**

**(Deepak Gupta, C.J.)**

The short question which arises in this writ petition is whether the service rendered by the petitioner as fixed pay employee as School Mother has to be taken into consideration while computing her qualifying period for purposes of grant of pension and other retiral benefits.

2. The undisputed facts are that the petitioner was appointed as School Mother on fixed term basis vide order dated 19-07-1990. This appointment was on contractual basis but it continued till the petitioner was regularized in service on 03-11-2007. She retired on attaining the age of superannuation on 30-06-2013. The petitioner claims that this service is to be counted for purposes of calculating her qualifying service.

3. On the other hand, the stand of the State is that the appointment of the petitioner on fixed term basis cannot be taken into consideration and since the petitioner has not completed 10 years of service since her regular appointment in 2007 she is not entitled to pension. It is contended that the petitioner was not in a pensionable employment and was not a Government servant till her regularization.

4. Reference in this behalf may be made to the Tripura Civil Services (Conduct) Rules, 1988. Rule 1(ii) reads as follows:-

*“1(ii). They shall apply to all employees of the Government of Tripura except persons appointed to any All India Services.”*

Rule 2(c) reads as follows:-

*“2(c). “Government Employee” means a person appointed to a service or post in connection with the affairs of the State;”*

5. Rule 1(ii) clearly mentions that it applies to all employees of the Government of Tripura except persons appointed to any All India Services. This rule makes no distinction between temporary employees, permanent employees, contractual employees etc. Therefore, it is apparent that even a contractual employee is governed by the Tripura Civil Services (Conduct) Rules and is bound to maintain the standards of conduct expected under the said rules. Rule 2(c) again defines Government employee to mean a person appointed to a service or post in connection with the affairs of the State.

6. The main issue is as to whether the petitioner is a Government Servant or not. The basic authority on the point is a Constitutional Bench judgment of the Apex Court in ***The State of Assam and others v. Kanak Chandra Dutta, [AIR 1967 SC 884]***. Reference may be made to paras-9, 10 and 11 of the judgment which read as follows:-

*“9. The question is whether a Mauzadar is a person holding a civil post under the State within Art.311 of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Art.311. In Art.311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, see the marginal notes to Arts. 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.*

**10.** *In the context of Arts. 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution. See Art. 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.*

**11.** *Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death*

*or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State.”*

7. It is, indeed, a sad state of affairs that when the State does not even pay proper wages to its employees and then contends that the employees are not entitled to pension. The petitioner and other co-workers were being paid a pittance of Rs.500/- per month which is even less than the daily wages of a workman. The stand of the State is also totally contrary to the rules, especially Rule 13 of the CCS (Pension) Rules. Rule 13 reads as follows:-

**“13. Commencement of qualifying service**

*Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:*

*Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:*

*Provided further that -*

*(a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and*

*(b) in the case of a Government servant not covered by Clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.*

*(c) the provisions of Clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19."*

8. This rule clearly lays down that qualifying services of a Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in officiating or in temporary capacity. The petitioner was appointed on contract basis on 19-07-1990 and she continued to work for 17 long years on temporary basis till her services were regularised in the year 2007.

9. Rule 14 of the CCS (Pension) Rules lays down the conditions subject to which her service qualifies. Under sub-rule (1) if the services of the Government servant are regulated by the Government, then the services have to be taken into consideration. The petitioner was working under the direct control of the Government and she was under the disciplinary control of the

Government and, therefore, this condition is satisfied. The petitioner was being paid salary by the Government out of a fund administered by the State of Tripura and, therefore, qualifies for grant of pension.

10. It is urged on behalf of the State that the petitioner was in a non-pensionable establishment. All employees of the Government have to be given benefits either under some pension funds or under the Provident Fund Scheme. There can be no employment under the Government who does not fall under either of the two beneficiary schemes. Either there should be an Employees Pension Scheme and in case, there is no such scheme, then the employee would fall within the ambit of the Pension Rules. Under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, every employer is required to frame a scheme for Employees Pension Scheme providing for superannuation pension, retiring pension or permanent total disablement pension. There has to be a pension fund. The State cannot have it both ways. It cannot claim that it is neither liable to pay under the Employees' Provident Funds Act nor is liable to pay pension.

11. It would also be pertinent to mention that the Central Government and the Government of Tripura have taken a decision that even half of the services rendered by an employee on daily wages shall be counted towards qualifying service. The person appointed on fixed pay basis is on a much better footing than a

person appointed on daily wages and if half of the service rendered by a daily wages employee can be counted for determining his/her qualifying service, I see no reason why the full service rendered by a fixed pay employee should not be counted towards her qualifying service if this uninterrupted service is followed by regular service.

12. In view of the above discussion, the writ petition is allowed with costs assessed at Rs.5,000/- (rupees five thousand) and it is directed that the service rendered by the petitioner from the date of her joining as School Mother on fixed pay basis pursuant to the letter of appointment dated 19-07-1990 till her regularisation shall be added to her regular service from 01-10-2007 till her superannuation on 03-11-2007 for calculating her pension and other retiral benefits. The State shall ensure that the pension is accordingly fixed and all retiral benefits be released in favour of the petitioner latest by 31<sup>st</sup> January, 2016 along with interest @ 9% per annum from the date of retirement of the petitioner, i.e. 30-06-2013 till payment/deposit of this amount.

13. The writ petition is disposed of in the aforesaid terms.

**JUDGE**

**CHIEF JUSTICE**