HIGH COURT OF TRIPURA
AGARTALA

WA No. 206 of 2020

The State of Tripura and others

..... Appellant(s).

Vs.

Smti Samita Saha and another.

..... Respondent(s).

For Appellant(s) : Mr. M. Debbarma, Addl. G. A.
For Respondent(s) : None.

THE HON'BLE MR. JUSTICE S. TALAPATRA
THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

O R D E R

03/12/2020

Heard Mr. Mangal Debbarma, learned Additional Govt. Advocate appearing for the appellants.

[2] By means of this inter-court appeal, the judgment dated 12.03.2020 delivered in W.P(C) No.1138 of 2019 has been called in question. By the said judgment learned Single Judge has observed as follows:

> "[8] I do not find any distinction in the case of the petitioner as compared to the case of the petitioners in case of ***Smt. Sandhya Banik***(Supra). Only cosmetic difference of those petitioners being absorbed as Supervisors as against the present petitioner being brought on the regular establishment on the post of School Mother would make no difference. The basic philosophy is common, namely, that the Government itself has a scheme under which 50% of the past service rendered by Contingent Worker would count towards pensionary benefits upon being regularized. This policy was utilized for the purpose of issuing directions in favour of the petitioners in the said case of Smt. Sandhya Banik. Merely because the petitioner was absorbed as a School Mother and not as a Supervisor, would not make her case distinguishable.

[9] Reference can also be made to a decision of Division Bench of this Court in case of ***Smt. Mamata Rani Roy(Saha) Vs. the State of Tripura and Ors., W.P(c) No.77/2015*** dated 8th July, 2015. In the said case, the petitioner was appointed as School Mother on fixed term basis on 19th July, 1990. She was regularized in service on 3rd November, 2007. She retired on attaining the age of superannuation on 30th June, 2013. She claimed that her past service before regularization should qualify for pensionable service. The Government had taken a stand that as a School Mother she was not holding a pensionable post. This contention was rejected by the Court by making following observation:

> "10. It is urged on behalf of the State that the petitioner was in a non-cognisable 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' Funds Act nor is liable to pay pension."

[10] In the result, the petition is allowed. Respondents are directed to count 50% of the petitioner's past service as Anganwadi Worker towards qualifying service for pension. Her pension may be fixed accordingly. Arrears payable may be released. Entire exercise shall be completed within 4(four) months from today.

Petition is disposed of accordingly. Pending application(s), if any, also stands disposed of."

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[3] According to Mr. Debbarma, learned Addl. G. A, in the cases of Anganwadi workers, who were regularized as Supervisors, ICDS, 50% of the total period of service as rendered as the Anganwadi workers was decided to be counted with the qualifying service for purpose of pension and other retiral benefits. It is needless to mention that those posts of Supervisors were filled up from the Anganwadi workers by way of promotion. Mr. Debbarma, learned Addl. G. A has drawn our attention to the memorandum dated 02.11.2017, Annexure-R/2 to the memorandum of appeal. A bare reading of the said memorandum would show that by virtue of the said judgment all benefits were extended to the Supervisors, ICDS who were promoted from the Anganwadi worker. In the said manner, the Government had implemented the said judgment by issuance of the said memorandum dated 02.11.2017.

[4] Learned Single Judge has issued similar direction. Only difference in the present case is that in place of the Supervisors, ICDS, the post to where the present petitioner has been regularized and promoted is the post of School Mother. Mr. Debbarma, learned Addl. G.A has further submitted that since there is no memorandum like the memorandum dated 02.11.2017, the petitioner cannot claim as a matter of right to get the similar benefits. Despite our best efforts to understand the analogy, we failed to do so, inasmuch the same analogy can be applied to the similar class of employees. The appellant has completely failed to make out an intelligible differentia between the petitioner and the class those got the benefit of the past service to the extent of 50% of the service that they rendered as the Anganwadi worker.

[5] Having observed thus we do not find any merit in this appeal and accordingly, the appeal stands dismissed. Pending application(s), if any, also stands disposed of.

[6] 50% of the period that the petitioner had served as Anganwadi worker will be added towards his qualifying service for the purpose of pension and other retiral benefits. Such benefits, as would accrue shall be released within three months from today without fail.

No costs.

JUDGE **JUDGE**

HIGH COURT OF TRIPURA
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