

**HIGH COURT OF TRIPURA
AGARTALA**

W.P. (C) No.1263/2017

Sri Raj Gopal Bhattacharjee,
S/O. – Lt. Rama Ranjan Bhattacharjee,
Resident of Ashrampalli, Kumarghat,
Unakoti Tripura, PIN – 799001.

---- Petitioner(s).

Versus

1. The State of Tripura

To be represented by Secretary,
Finance Department, Government of Tripura,
New Secretariat Complex, Kunjaban,
Agartala, West Tripura, PIN - 799006.

2. The Principal Secretary,

Public Works Department (R & B),
Government of Tripura, New Secretariat Complex,
Kunjaban, Agartala, West Tripura, PIN - 799006.

3. The Chief Engineer,

Public Works Department (R & B),
Government of Tripura, P.S. – West Agartala,
P.O. – Agartala, PIN - 799001.

4. The Executive Engineer,

Public Works Department (R & B),
Kumarghat Division, Kumarghat,
North Tripura.

5. The Superintending Engineer,

1st Circle, PWD (R & B), Kumarghat,
Unakoti Tripura.

6. The Accountant General (A & E), Tripura,

Office of the Accountant General (A & E),
Malancha Niwas, P.O. – Kunjaban, Agartala,
West Tripura, PIN – 799006.

7. The Sr. Deputy Accountant General (A & E), Tripura,

Office of the Accountant General (A & E),
Malancha Niwas, P.O. – Kunjaban, Agartala,
West Tripura, PIN – 799006.

---- Respondent(s).

For Petitioner(s) : Mr. P. Roy Barman, Advocate.

Mr. K. Nath, Advocate.

Mr. Samarjit Bhattacharjee, Advocate.

Ms. A. Debbarma, Advocate.

For Respondent(s) : Mr. H. Deb, Asstt. SG.

Mr. N. Choudhury, GA.

Mr. G.K. Nama, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AJAY RASTOGI

Order

30/08/2018.

The petitioner was initially engaged as a Muster Roll Worker and served w.e.f. 04.04.1973 to 01.12.1978 under Kumarghat Sub-Division, PWD. His service has been certified by the then Executive Engineer, Kumarghat Division (PWD), Kumarghat, North Tripura under seal & signature dt.30.06.2006 (Annexure-1).

2. In continuation, he was appointed on 02.12.1978 as LDC and finally, retired from service on 31.10.2008 when his pension papers were forwarded to the Accountant General Office his service which he rendered from 02.12.1978 to the date of retirement dt.31.10.2008 was acknowledged by the respondents and accordingly, all the retiral dues are paid.

3. The grievance of the petitioner is that prior to his appointment on 02.12.1978, he had served as a Muster Roll Worker w.e.f. 04.04.1973 up to 01.12.1978 and in terms of the Memorandum of the respondent dt.16.08.1978, those who have served as a Contingent Workers, half of the service rendered by contingent employee, who was later on engaged followed by employment in regular pensionable service shall be counted as service rendered for the purpose of pension and other retiral dues, which the employee is entitled for.

4. Counsel submits that since he had rendered service prior to his regular employment as a Muster Roll Worker from 04.04.1973 to

01.12.1978 in terms of the Memorandum dt.16.08.1978, half of the service may be counted as a qualifying service for the purpose of pensionery benefits.

5. I consider appropriate to quote the Memorandum dt.16.08.1978 (Annexure-2) on which reliance placed by the petitioner:-

"No.F.8(3)-FIN(G)/78
Government of Tripura
Finance Department
Dated, Agartala, the 16th August, 1978.

M E M O R A N D U M

Subject: Counting of service of contingent workers towards pension etc.

The question as to how the past services of contingent employee, brought on to the regular establishment, may be counted for the purpose of pension, increment etc. has been under consideration of the State Government for some time past. After considering all the aspects, the governor has been pleased to decide that counting of service of contingent workers towards pension etc. will be guided on the following conditions:

(a) Half the period of continuous service rendered by a contingent Half the period of continuous service rendered by a contingent employees paid from "wages" and engaged on full time may be counted towards pension when followed by employment in regular pensionable service.

(b) Half the period of continuous service rendered by a contingent employee paid from "wages" on full time basis when followed by employment in regular pensionable service, limited to completed years (ignoring fractions out of such half service should count for increment for fixation of pay on such regular appointment.

(c) The period of service counting for pension as above should be taken into consideration in declaring such

employee "quasi-permanent" subject to fulfillment of other conditions.

(d) The above concession will entitle such employee to weightage for the purpose of seniority in the cadre in which regular appointment is made of such contingent employees to the extent it counts for increment.

(e) The continuous contingent service as above will mean such service under the Government and not limited to any particular department.

2. The orders will take effect from 1.7.78.

Sd/-
(B.B. Deb Roy)
Finance Secretary
Government of Tripura."

6. Notices were issued on 18.09.2017 and the Government counsel, Shri T.D. Majumder appeared on behalf of the respondent Nos.1 to 5. Almost a year has passed still counter affidavit has not been filed and today also the counsel for the State wants further time to file counter affidavit although counter affidavit has been filed by the respondent Nos.6 and 7. Since sufficient opportunity being afforded to the respondent Nos.1 to 5 to file the counter affidavit and still it has not been filed and the petitioner was retired way back on 31.10.2008 and his grievance has not been ventilated for a sufficient long time, I find no reason to grant further indulgence of filing counter affidavit, as prayed for by the State.

7. After I have heard the counsel for the parties, I find that what is being submitted before the court regarding the service of the petitioner rendered as a Muster Roll Worker from 04.04.1973 to 01.12.1978, half of the service which he had rendered deserves to be counted in terms of Memorandum dt.16.08.1978 and it reveals

from the record that the respondents while computing the qualifying service rendered by the petitioner as a regular employee from 02.01.1978 alone was considered by respondents ignoring the service which he had rendered prior thereto as a contingent worker from 04.04.1973 to 01.12.1978 and indisputedly half of the service has to be counted as a qualifying service rendered by the petitioner in computing as a qualifying pensionable service.

8. The writ petition is accordingly, succeeds & allowed. The respondent Nos.1 to 5 are directed to re-compute half of the service rendered by the petitioner from 04.04.1973 to 01.12.1978 as a qualifying service keeping in view the memorandum of the Government dt.16.08.1978 and after re-computation of his qualifying service his pension and other retiral benefits be computed in terms of directions of this court and after re-computation, the arrears shall be paid within a period of 2 (two) months. No cost.

CHIEF JUSTICE

*Certificate:- All corrections made in the judgment/order
have been incorporated in the judgment/order*

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