

**HIGH COURT OF TRIPURA
AGARTALA**

WA 130 OF 2019

Sri Debashis Saha,
S/o Late Sukumar Saha,
R/o Vill & P.O. Nidaya, P.S. Jatrapur,
Sonamura, District-Sepahijala, Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

WA 131 OF 2019

Sri Bindhu Madhav Saha

S/o Anil Kumar Saha, R.O. Vill-Madhya Pratapgarh,
P.O. East Pratapgarh, P.S. East Agartala, District-West Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

WA 132 OF 2019

Sri Abhijit Kar

S/o Sri Dilip Kr. Kar, R/o Vill-Ujan Abhoynagar,
P.O. Abhoynagar, P.S. New Capital Complex,
District-West Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

WA 133 OF 2019

Sri Sankar Saha,

S/o Dulal Ch. Saha, R/o Vill-Shantinagar, P.O. & P.S. Teliamura,
District-Khowai, Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

WA 134 OF 2019

Sri Narayan Bir,

S/o Amar Chandra Bir, R/o Vill-Purba Palatana,
P.O. Palatana, P.S. Kakraban, District-Gomati Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

WA 135 OF 2019

Sri Pintu Debbarma,

S/o Parashmani Debbarma, R/o Vill-Kumaria Para,
P.O. S.K. Para, P.S. Srinagar, District-West Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

WA 136 OF 2019

Sri Sankar Debnath,

S/o Sri Dilip Debnath, R/o Vill-Ranirgaon, P.O. Majlishpur,
P.S. Ranirbazar, District-West Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

WA 137 OF 2019

Sri Santanu Biswas,

S/o Sri Krishnadhan Biswas, R/o Vill & P.O. Barjala,
P.S. West Agartala, District-West Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

WA 138 OF 2019

Sri Tarun Kishore Noatia,

S/o Adhin Dayal Noatia, R/o Vill & P.O. Garjee,
P.S. R.K.Pur, District-Gomati Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

WA 139 OF 2019

Sri Debashis Pal,

S/o Sri Nripendra Ch. Pal, R/o Vill & P.O. Nidaya,
P.S. Jatrapur, District-Sepahijala, Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

WA 140 OF 2019

Sri Sanjoy Saha,

S/o Ranjit Saha, R/o Vill-Badarmokam,
P.O. & P.S.- R.K.Pur, District-Gomati Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

WA 141 OF 2019

Sri Nani Gopal Das,

S/o Sri Binod Das, R/o Vill-60, Ward-2. Mahadebtilla,
P.O. Sonatala, P.S. Khowai, District-Khowai Tripura.

..... Appellant

Vrs.

1. The State of Tripura,

Represented by its Principal Secretary for the
Department of Health and Family Welfare, Govt. of Tripura,
P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director,

Department of Health and Family Welfare,
Govt. of Tripura, P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

.... Respondents.

Present:

For the petitioner(s) : Mr. Arijit Bhowmik, Advocate.
Mr. Ankan Tilak Paul, Advocate.

For the respondent(s) : Mr. N. Choudhury, Govt. Advocate.

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KAROL
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

30/07/2019

Prayers, being common that of WA No.130/2019, being lead case is reproduced hereunder:

*"i. Admit this appeal;
ii. Issue notice upon the respondents;
iii. Call for the relevant records;
iv. And after hearing the parties be pleased to allow the instant appeal against the judgment and order dated 30/01/2019 passed in W.P.(C) No.806 of 2018 and other batch matters alongwith the order dated 21.05.2019 passed in Review Petition No.31 of 2019 and pass necessary directions upon the Respondents.*

AND/OR

Pass any other order/orders as deemed fit and proper by this Honourable Court."

Based on the concession made on behalf of the State, the operative portion of the judgment impugned herein, reads here-under.

"5. Mr. Bhowmik, learned counsel appearing for the petitioners has submitted that after perusing the seniority list, the petitioners have really understood that their past service was not given any consideration whatsoever. By the order dated 29.01.2019, this court had made accommodation to Mr. Choudhury, learned G.A. for taking instruction whether the petitioners' past service as rendered on the basis of the engagement order dated 07.05.2005 [Annexure-1 to the writ petition being W.P.(C) No.806 of 2018] can be added as the qualifying service for purpose of pension and seniority.

Today, Mr. Choudhury, learned G.A. has submitted that he has the instruction that the past service of the petitioners would be added as the qualifying service for purpose of pension and seniority. However, Mr. Choudhury, learned G.A. has submitted that the prayer for preponing the date of appointment to 16.05.2005 on which day the petitioners had joined in terms of the engagement

order dated 07.05.2005 cannot be acceptable as those appointments were not made through any selection process or following the recruitment rules and hence, no financial benefit for the said period can be given to the petitioners. Furthermore, the petitioners knew the consequence of such engagement. They had also participated in the subsequent selection process in terms of the employment notification dated 16.08.2006 as enclosed with these writ petitions and on their selection, they were regularly appointed and they were appointed from the date as reflected in the order dated 08.08.2012 [Annexure-12 to the writ petition being W.P.(C) No.806 of 2018] under column No.4. Therefore, the period from 16.05.2005 to 31.07.2007 was not counted with the regular service of the petitioners. Since the respondents have favourably considered that the petitioners will be added the said period of service w.e.f. 16.05.2005 to 31.07.2007 and with as the qualifying service for purpose of pension and seniority, this Court is of the view that these writ petitions can be disposed of with the following directions viz:

(i) the petitioners' date of appointment for purpose of seniority and the qualifying service for pension etc. shall be 16.05.2005 and

(ii) the period from 16.05.2005 to 31.07.2007 shall be added as the qualifying service but for preponing the date of appointment, in the context of this case the petitioners will not get any financial benefit, even the release of their regular pay scale w.e.f. 31.07.2012 shall remain unaffected.

In terms of the above, these writ petitions are allowed to the extent as indicated above."

We find that the judgment is based on the concession, limited in nature, made by the State. On such count, there is no adjudication of rights of the parties and the period of the petitioners engagement, prior to their regular appointment has been counted only for the purpose of seniority and qualifying service for pensionary benefits. This concession itself in our considered view was sufficient enough to have satisfied the petitioners.

Undisputedly, the petitioners initial engagement was not made in accordance with the established principle of law. As such, we

find no reason to interfere with the view taken by the learned Single Judge in not granting pecuniary benefits to the petitioners.

For the reason that the judgment stands passed based on concession, we would not allow the petitioners to rake up the issue based on the some other judgment, more so, when it did not find favour with the learned Single Judge, in considering the application seeking review of the impugned judgment.

The appeals accordingly stand dismissed.

(ARINDAM LODH), J

(SANJAY KAROL), CJ.

