

**IN THE HIGH COURT OF TRIPURA
A G A R T A L A**

W.P.(C) No.806 of 2018
W.P.(C) No.807 of 2018
W.P.(C) No.808 of 2018
W.P.(C) No.809 of 2018
W.P.(C) No.810 of 2018
W.P.(C) No.811 of 2018
W.P.(C) No.812 of 2018
W.P.(C) No.813 of 2018
W.P.(C) No.814 of 2018
W.P.(C) No.815 of 2018
W.P.(C) No.816 of 2018
W.P.(C) No.817 of 2018
&
W.P.(C) No.125 of 2019

In W.P.(C) No.806 of 2018

Sri Debashis Saha,
son of late Sukumar Saha, resident of
village & P.O. Nidaya, P.S. Jatrapur,
Sonamura, District- Sepahijala, Tripura

..... **Petitioner**

By Advocate:

Mr. A. Bhowmik, Adv.

- V e r s u s -

1. **The State of Tripura,**
to be represented by its Principal
Secretary, Department of Health & Family
Welfare, Government of Tripura, P.O.
Secretariat Complex, New Capital
Complex, PIN-799010, Agartala, West
Tripura
2. **The Director,**
Department of Health & Family Welfare,
Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, Agartala, West
Tripura

..... **Respondents**

By Advocate:

Mr. N. Choudhury, G.A.

In W.P.(C) No.807 of 2018

Sri Sankar Debnath,

son of Sri Dilip Debnath, resident of
village-Ranirgaon, P.O. Majlishpur, P.S.
Ranirbazar, District- West Tripura

..... **Petitioner**

By Advocate:

Mr. A. Bhowmik, Adv.

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Tripura

..... **Respondents**

By Advocate:

Mr. N. Choudhury, G.A.

In W.P.(C) No.808 of 2018

Sri Badal Majumder,

son of Dinesh Ch. Majumder, resident of
village- Dudhpushkarini, P.O.
Moghpuskarani, P.S. Kakraban, District-
Gomati, Tripura

..... **Petitioner**

By Advocate:

Mr. A. Bhowmik, Adv.

- V e r s u s -

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P.S. New Capital Complex, Agartala, West
Tripura

..... Respondents

By Advocate:

Mr. N. Choudhury, G.A.

In W.P.(C) No.809 of 2018

Sri Tarun Kishore Noatia,
son of Adhin Dayal Noatia, resident of
village & P.O. Garjee, P.S. R.K. Pur,
District- Gomati, Tripura

..... Petitioner

By Advocate:

Mr. A. Bhowmik, Adv.

- Versus -

1. **The State of Tripura,**
to be represented by its Principal
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Department of Health & Family Welfare,
Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, Agartala, West
Tripura

..... Respondents

By Advocate:

Mr. N. Choudhury, G.A.

In W.P.(C) No.810 of 2018

Sri Pintu Debbarma,
son of Parashmani Debbarma, resident of
village- Kumaria Para, P.O. S.K. Para, P.S.
Srinagar, District- West Tripura

..... Petitioner

By Advocate:

Mr. A. Bhowmik, Adv.

- V e r s u s -

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Department of Health & Family Welfare,
Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, Agartala, West
Tripura

..... **Respondents**

By Advocate:

Mr. N. Choudhury, G.A.

In W.P.(C) No.811 of 2018

Sri Narayan Bir,

son of Amar Chandra Bir, resident of
village-Purba Palatana, P.O. Palatana, P.S.
Kakraban, District- Gomati, Tripura

..... **Petitioner**

By Advocate:

Mr. A. Bhowmik, Adv.

- V e r s u s -

1. **The State of Tripura,**
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Department of Health & Family Welfare,
Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, Agartala, West
Tripura

..... **Respondents**

By Advocate:

Mr. N. Choudhury, G.A.

In W.P.(C) No.812 of 2018

Sri Sanjoy Saha,

son of Ranjit Saha, resident of village-
Badarmokam, P.O. & P.S. R.K. Pur,
District- Gomati, Tripura

..... **Petitioner**

By Advocate:

Mr. A. Bhowmik, Adv.

- V e r s u s -

1. **The State of Tripura,**
to be represented by its Principal Secretary, Department of Health & Family Welfare, Government of Tripura, P.O. Secretariat Complex, New Capital Complex, PIN-799010, Agartala, West Tripura
2. **The Director,**
Department of Health & Family Welfare, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, Agartala, West Tripura

..... **Respondents**

By Advocate:

Mr. N. Choudhury, G.A.

In W.P.(C) No.813 of 2018

Sri Sankar Saha,
son of Dulal Ch. Saha, resident of village-Shantinagar, P.O. & P.S. Teliamura, District- Khowai, Tripura

..... **Petitioner**

By Advocate:

Mr. A. Bhowmik, Adv.

- V e r s u s -

1. **The State of Tripura,**
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2. **The Director,**
Department of Health & Family Welfare, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, Agartala, West Tripura

..... **Respondents**

By Advocate:

Mr. N. Choudhury, G.A.

In W.P.(C) No.814 of 2018

Sri Bindu Madhab Saha,

son of Anil Kumar Saha, resident of
village-Madhya Pratapgarh, P.O. East
Pratapgarh, P.S. East Agartala, District-
West Tripura

..... **Petitioner**

By Advocate:

Mr. A. Bhowmik, Adv.

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Department of Health & Family Welfare,
Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, Agartala, West
Tripura

..... **Respondents**

By Advocate:

Mr. N. Choudhury, G.A.

In W.P.(C) No.815 of 2018

Sri Debasis Pal,

son of Sri Nripendra Ch. Pal, resident of
village & P.O. Nidaya, P.S. Jatrapur,
District- Sepahijala, Tripura

..... **Petitioner**

By Advocate:

Mr. A. Bhowmik, Adv.

- V e r s u s -

1. **The State of Tripura,**
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2. **The Director,**
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Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, Agartala, West
Tripura

..... Respondents

By Advocate:

Mr. N. Choudhury, G.A.

In W.P.(C) No.816 of 2018

Sri Santanu Biswas,
son of Sri Krishnadhan Biswas, resident of
village & P.O. Barjala, P.S. West Agartala,
District- West Tripura

..... Petitioner

By Advocate:

Mr. A. Bhowmik, Adv.

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1. **The State of Tripura,**
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2. **The Director,**
Department of Health & Family Welfare,
Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, Agartala, West
Tripura

..... Respondents

By Advocate:

Mr. N. Choudhury, G.A.

In W.P.(C) No.817 of 2018

Sri Nani Gopal Das,
son of Binod Das, resident of village- 60
Ward-2 Mahadebtilla, P.O. Sonatala, P.S.
Khowai, District- Khowai, Tripura

..... Petitioner

By Advocate:

Mr. A. Bhowmik, Adv.

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1. **The State of Tripura,**
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2. **The Director,**
Department of Health & Family Welfare,
Government of Tripura, P.O. Kunjaban,
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Tripura

..... Respondents

By Advocate:
Mr. N. Choudhury, G.A.

In W.P.(C) No.125 of 2019

Sri Abhijit Kar,
son of Sri Dilip Kar, resident of village-
Ujan Abhoynagar, P.O. Abhoynagar, P.S.
New Capital Complex, District- West
Tripura

..... Petitioner

By Advocate:
Mr. A. Bhowmik, Adv.

- V e r s u s -

1. **The State of Tripura,**
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Department of Health & Family Welfare,
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Tripura

..... Respondents

By Advocate:
Mr. N. Choudhury, G.A.

Date of hearing & delivery of : **30.01.2019**
Judgment & order

Whether fit for reporting :

YES	NO
	√

HON'BLE MR. JUSTICE S. TALAPATRA
JUDGMENT & ORDER (ORAL)

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioners as well as Mr. N. Choudhury, learned G.A. appearing for the respondents.

[2] All these writ petitions being W.P.(C) No.806 of 2018 [Sri Debasish Saha vs. State of Tripura & Ors.], W.P.(C) No.807 of 2018 [Sri Sankar Debnath vs. State of Tripura & Ors.], W.P.(C) No.808 of 2018 [Sri Badal Majumder vs. State of Tripura & Ors.], W.P.(C) No.809 of 2018 [Sri Tarun Kishore Noatia vs. State of Tripura & Ors.], W.P.(C) No.810 of 2018 [Sri Pintu Debbarma vs. State of Tripura & Ors.], W.P.(C) No.811 of 2018 [Sri Narayan Bir vs. State of Tripura & Ors.], W.P.(C) No.812 of 2018 [Sri Sanjoy Saha vs. State of Tripura & Ors.], W.P.(C) No.813 of 2018 [Sri Sankar Saha vs. State of Tripura & Ors.], W.P.(C) No.814 of 2018 [Sri Bindu Madhab Saha vs. State of Tripura & Ors.], W.P.(C) No.815 of 2018 [Sri Debasis Pal vs. State of Tripura & Ors.], W.P.(C) No.816 of 2018 [Sri Santanu Biswas vs. State of Tripura & Ors.], W.P.(C) No.817 of 2018 [Sri Nani Gopal Das vs. State of Tripura & Ors.] and W.P.(C) No.125 of 2019 [Sri Abhijit Kar vs. State of Tripura & Ors.] are consolidated for disposal by a common judgment inasmuch all the petitioners are similarly circumstanced and they have by these writ petitions prayed for an identical relief. The reliefs as prayed in this batch of writ petitions are as follows:

- (i) To give the petitioners the benefit of their past service w.e.f. 16.05.2005 as they were appointed as the Staff Nurse under the Health and Family Welfare Department on the fixed pay basis by the order under No.F.2.(1-178)-MS/Estt/2004 dated 07.05.2005 [Annexure-1 to the writ petition being W.P.(C) No.806 of 2018].

(ii) To interfere with the letter dated 22.10.2011, whereby the petitioners were denied the benefit of the past service in terms of the said order of engagement dated 07.05.2005 and

(iii) To grant the petitioners benefit of the regular pay scale by counting 5[five] years of service w.e.f. 16.05.2005 with all financial benefits what accrues for giving the effect of regular service w.e.f. 16.05.2005.

[3] Mr. A. Bhowmik, learned counsel appearing for the petitioners has submitted that the petitioners have discharged all the duties and responsibilities of the Staff Nurse w.e.f. 16.05.2005 in terms of the order dated 07.05.2005 and they had continued in that capacity till the date they were regularly appointed in the said post. There is no dispute that in terms of the employment notification dated 16.08.2006 all the petitioners had applied for the regular post of Staff Nurse and accordingly, all the petitioners were appointed on fixed pay basis in the regular establishment. The said engagement was time to time extended by the orders which are not under challenge. Finally, by the order under No.F.2(1-162)-MS/Estt/2002 dated 18.12.2008 [Annexure-10 to the writ petition being W.P.(C) No.806 of 2018] the engagement of the petitioners to the post of Staff Nurse was extended until further order on the same terms and conditions as stipulated in the appointment letter contained in the memorandum dated 16.05.2007 [Annexure-8 to the writ petition being W.P.(C) No.806 of 2018]. Thereafter, by the order under No.F.5(1-196)-MS/ESTT/2007 dated 08.08.2012 [Annexure-12 to the writ petition being W.P.(C) No.806 of 2018] all the petitioners who were appointed on fixed pay basis against the post created under the notification No.F.2(1-13)-MS/Estt/2006 dated 03.08.2006 with the concurrence of the Finance Department were

allowed to the scale of pay of Rs.5310-24000/- in the Pay Band-2 with Grade Pay of Rs.2400/- with from the date as reflected in the column No.5 of the order said dated 08.08.2012. In the said order itself, the date of the appointment of the petitioners on fixed pay basis was shown under column No.4. These figures relating to their appointment on fixed pay basis and the release of their regular pay scale on completion of 5 years of service are not under challenge from any corner. Mr. Bhowmik, learned counsel has submitted that prior to 01.08.2007, the petitioners had served but the said period has not been accepted as a part of their service arbitrarily. Further, he has submitted that the said period ought to have been considered as a part of the fixed pay service and then the regular pay scale would have been released after completion of 5 years from the date of their initial appointment on fixed pay basis by virtue order dated 07.05.2005. But the said prayer was rejected by the communication dated 22.10.2011, [Annexure-11 to the writ petition being W.P.(C) No.806 of 2018]. In the said communication, the Director of Health Services, Government of Tripura has observed that a proposal was sent to the Finance Department to provide time scale benefit in respect of 19 Nos. nursing personnel including the petitioners by counting the period from which they were engaged as Staff Nurse under the Health and Family Welfare Department but the Finance Department regretted their inability to concur the said proposal of the Health Department by their UO No.1905/Fin(G)/11 dated 23.03.2011. Based on the said opinion as tendered by the Finance Department, the representation filed by one of the petitioners, namely Debasis Saha was rejected and Mr. Bhowmik, learned counsel has submitted that similar representations filed by all the writ petitioners were also rejected.

[4] Mr. N. Choudhury, learned G.A. has submitted that on the basis of the engagement as reflected in the order dated 08.08.2012, the final seniority list of Staff Nurses under the Directorate of Health and Family Welfare has been published under Memorandum No.F.2(99)-MS/ESTT/2009 dated 16.01.2017 [Annexure-13 to the writ petition being W.P.(C) No.806 of 2018].

[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.

There shall be no order as to costs.

JUDGE

Sujay