

(2015) 06 TP CK 0099
In the Tripura High Court
Case No : Writ Petition (C) 421 of 2013

Sankar Ranjan Bhattacharjee

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Citation : (2015) 06 TP CK 0099

Hon'ble Judges : Deepak Gupta, C.J.;Utpalendu Bikas Saha, J

Bench : Division Bench

Advocate : P. Roy Barman, S. Bhattacharji and K. Nath, for the Appellant; T.D. Majumder, GA and A. Roy Barman, CGC, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J.

1. The petitioner, by means of this petition has prayed that the daily wages service rendered by him from 18.12.1972 to 09.03.1978 when he was regularized as Lower Division Clerk be taken into consideration while fixing his qualifying service for purposes of grant of pension and other retiral benefits.

2. The undisputed facts are that the petitioner was offered temporary employment as Lower Division Clerk on 04.03.1978 and retired from service on 30.06.2007. Even before this retirement, the petitioner has raised the issue that he had been working as daily rated worker from 18.02.1972 till his regularization and the petitioner claimed that in terms of the memorandum dated 16.08.1978 issued by the Finance Secretary, Government of Tripura, 50% of the daily rated service was to be counted as qualifying services for purposes of computing his pension and other pensionary benefits.

3. Reference may be made to this memorandum dated 16.08.1978, which reads as follows:

"NO. F.8(3)-FIN(G)/78 GOVERNMENT OF TRIPURA FINANCE DEPARTMENT

Dated, Agartala, the 16th August, 1978

MEMORANDUM

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

The question as to how the past services of contingent employees, 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 one following conditions:--

"a) Half the period of continuous service rendered by a contingent employee 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 the 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 employees "quasipermanent" subject to fulfillment of other conditions.

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

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

2. The orders will take effect from 1.7.78.

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

4. The memorandum clearly states that half the period of continuous service rendered by a contingent employee paid from wages on full time basis if followed by regular employment is taken into consideration for counting of pension etc.

5. We are not at this stage considering the fact whether the petitioner could have counted this period for any other purpose because that is not the issue before us and we are limiting our discussion to pension alone.

6. In fact, the State did not specifically deny that 50% of the service rendered on daily wage basis has to be taken into consideration for the purpose of reckoning the qualifying service but the stand of the State was that there was no material before it to show that the petitioner had actually worked on daily wages service. Therefore, on 11.12.2014 we had permitted the petitioner to file additional

documents and these were filed. On 28.05.2015 we had given opportunity to the State to file any counter but no such counter affidavit has been filed.

7. At the outset, we may mention that even along with the writ petition, the petitioner had annexed a communication dated 16.12.1972 which showed that the petitioner was engaged as daily rated worker on daily wages and joined as such on 18.12.1972. The petitioner had also annexed another communication dated 19.12.1973 which indicated that he had worked from 18.12.1972 and was working till 19.12.1973 when the letter was issued. Unfortunately there was no material for the period 1973 till his regularization in the year 1978.

8. Along with the fresh affidavit and rejoinder, the petitioner has attached certain other documents. One of the documents attached is a document dated 24.06.1974 which is an order whereby the petitioner who was working in the Agro Service Centre, Kumarghat was shifted to the Rural Industries Project, Kailasahar, which shows that even he as a daily rated worker was transferred. Thereafter, another order dated 07.05.1974 has been attached which indicates that he was working in the Rural Industries Project office, Kailasahar. There is another document dated 14.06.1974 which clearly indicates that the petitioner was working at the Agro Service Centre, Kumarghat from 18.12.1972 till 14.06.1974.

9. No doubt, there are no documents from 1974 till 1978 but in view of the documents, now proved, we cannot brush aside the allegation of the petitioner that he had worked from 1972 to 1974. At that time the petitioner was just a lowly paid daily rated worker. Such a worker may or may not keep all the documents which were available with him. The State would however have record to show who was engaged as a daily rated worker, at what rate the person was engaged and what was the period of his engagement. The petitioner has discharged some portion of the burden which lay on him by clearly showing that he was working at Kumarghat from 1972 to 1974 and thereafter he was sent to Kailasahar. The State cannot wash its hands of the matter by only claiming that it has no records. The State is not only expected to maintain records but it is also expected to preserve the records. If we had believed the version of the State then the petitioner had never worked as a daily rated worker.

10. In this view of the matter, we are clearly of the view that an adverse inference can be drawn against the State since the petitioner has clearly satisfied us that he was working from 1972 to 1974 in Kumarghat and was then transferred to Kailasahar where he joined as such. The State could have easily got the record from Kailasahar but the same has not been produced. Therefore, on the basis of the material on record and on the basis of preponderance of evidence, we hold that the petitioner was working as a daily rated worker from 18.12.1972 till his regularization on 10.03.1978 and this period shall be taken into consideration for calculating his pension, gratuity and other retiral benefits in terms of the memorandum dated 16.08.1978, cited here-in-above. The monetary benefits payable to the petitioner in view of the aforesaid judgment shall be

released to him latest by 30th November, 2015 failing which the State shall also be liable to pay the interest @12% per annum w.e.f. today.

11. The petition is disposed of in the aforesaid terms. No order as to costs.