

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.47 of 2024

Dibyendu Chakraborty, son of Late Dwijendra Chakraborty, resident of Town Gobindapur, P.O. & P.S.-Kailashahar, District-Unakoti Tripura.

..... Appellant(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary to the Rural Development Department, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura.

2. The Director (Projects), State Level Monitoring Cell of SGSY, Rural Development Department, Government of Tripura, Agartala, District-West Tripura.

3. The Chief Executive Officer, Office of the District Magistrate & Collector, Unakoti Tripura, District Rural Development Agency, Kailasahar, District-Unakoti Tripura.

4. The Project Director (Additional District Magistrate & Collector, Unakoti Tripura), District Rural Development Agency, Kailasahar, District-Unakoti Tripura.

.....Respondent(s).

For Appellant(s) : Mr. Purusuttam Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Koomar Chakraborty, Advocate,
Mr. Dipjyoti Paul, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

CAV reserved on : **04.08.2025.**

Judgment delivered on : **27.08.2025.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER

(M.S. Ramachandra Rao, C.J.)

1) Heard Mr. Purusuttam Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, counsel appearing for the appellant as

well as Mr. Mangal Debbarma, Addl. Government Advocate appearing for the respondents-State.

2) This appeal is preferred against a judgment dt. 09.04.2024 of the learned Single Judge in WP(C) No.607 of 2023.

3) The appellant is the writ petitioner and the respondents are the State of Tripura and others.

The background facts

4) The appellant is an Ex-Serviceman who after retiring from the Armed Forces was appointed on 10.09.2001 as an Accounts Officer *on contract basis* after being interviewed.

5) His pay was later revised on 11.03.2002 and fixed at Rs.7,000/- w.e.f. 01.03.2002 vide a memo dt. 11.03.2002, and subsequently further revised to Rs.7,500/- per month on the *renewal of his contract* from 10.09.2002 to 09.09.2004 vide a memo dt. 18.06.2002 w.e.f. 01.09.2002.

6) The appellant completed 10(ten) years of service on 01.10.2011 and he was granted the benefit of ACP-I. He was also granted the benefit of MACP-II with effect from the date of completion of 17 years of service on 12.09.2019.

7) The appellant's services were extended up to 31.12.2021 and thereafter his services were discontinued.

8) He thereafter submitted a representation on 15.01.2022 requesting for release of his post retiral benefits etc., but they were not granted to him.

WP(C) No.197 of 2022

9) He then filed WP(C) No.197 of 2022 before this Court and the same was disposed of on 16.05.2023 directing the respondents to consider his claim.

10) Thereupon an order dt. 27.07.2023 was passed by the Secretary, Rural Development Department of the Government of Tripura rejecting his claim.

WP(C) No.607 of 2023

11) The appellant then filed W.P.(C).No.607 of 2023 in this High Court. In the said Writ petition, the appellant:

(i) challenged an order dt. 27.07.2023 passed by the Secretary, Rural Development Department of the Government of Tripura;

(ii) sought payment of gratuity of Rs.10,00,000/- along with interest thereon to him;

(iii) sought leave encashment @ Rs.9,47,600/- along with interest thereon to him;

(iv) sought payment of arrears of pay from October, 2018 to May, 2020 as per Revision of Pay made vide Tripura State Civil Services (1st Amendment) Rules, 2018 in his favour;

(v) sought a direction to the respondents to make payment of the outstanding salary for the period from July, 2021 to December, 2021 along with the enhancement of periodical increment which fell due on 01.07.2021 but which was not released, though he had served for the said period;

(vi) to upload/record the date of retirement/release of the petitioner from District Rural Development Agency (for short, DRDA),

Unakoti Tripura, i.e. 31.12.2021 in the Employees' Provident Fund (for short, EPF) portal to enable him to receive the EPF as well as the EPF pension as admissible.

Contentions of the Appellant before the learned Single Judge

12) It was the contention of the appellant before the learned Single Judge that he is to be treated as a regular appointee notwithstanding his initial contractual appointment.

13) According to him, in the year 2002 vide a letter dt. 25.11.2002 addressed to the Chief Executive Officer (District Magistrate & Collector), DRDA, North Tripura, Kailashahar, the appellant had requested for issuance of a "No Objection Certificate" to enable him to join the post of Accountant in Rajya Sainik Board, Government of Tripura. However, the said officer issued a memo dt. 18.12.2002 sanctioning a regular pay scale to him. He also contends that the Chief Executive Officer issued a letter on 27.12.2002 informing the Secretary, Rajya Sainik Board, Government of Tripura that the DRDA was not in a position to spare his services at that juncture.

14) According to the appellant, on 20.08.2013 the respondents indicated his name under the Section of DRDA Borne Employees (Regular) and that on various occasions his post was reflected as if he was holding a regular position. He also stated that on 11.07.2018 the respondents stated that the post held by him is a permanent post and not contractual.

15) He also placed reliance on the grant of the ACP-I benefit on 01.10.2011 and the grant of MACP-II on 12.09.2019. According to him, on 20.03.2021 the Project Director, DRDA communicated that the retiral benefits amounting to Rs.19,47,600/- under the Heads of gratuity and leave

encashment have to be released to him, but they were not released even after his retirement on 31.12.2021.

16) He also questioned the order dt. 27.07.2023 passed by the respondent No.1 stating that the view taken by the respondent No.1 therein is erroneous.

The Stand of the State Government

17) The State Government, through the Government Advocate, contended that some mischief had taken place and the appellant might have manipulated the records when he was holding the post of Accounts Officer in DRDA and the nature of contractual appointment of the appellant was wrongly shown as a regular employee by misleading the authority.

18) The respondents also referred to a communication dt. 17.03.2022 between the Chief Executive Officer (District Magistrate & Collector), DRDA, Unakoti District, Kailashahar and the Director (Projects), SLMC, Rural Development Department of the Government of Tripura wherein an enquiry was sought into the irregularity in handling of pay matters, grant of pay scale, ACP etc. in favour of the appellant as the same was without any authority of the Rural Development Department or the Finance Department and though the appellant was engaged on contract basis, regular pay scale was wrongly allowed and that he retired from service under DRDA on 05.12.2019.

The judgment of the learned single Judge

19) The learned Single Judge directed that the matter be inquired into in terms of the letter dt. 17.03.2022, and in the event he is a regular employee, the benefits he is entitled to, should be granted to him. He directed that the enquiry in terms of the said letter dt. 17.03.2022 be completed expeditiously.

He set aside the order dt. 27.07.2023 and remitted the matter back to the respondents.

20) Assailing the same, the appellant filed this appeal.

This Writ Appeal

21) On 13.05.2024 a Coordinate Bench headed by the Chief Justice had directed the appellant to file an affidavit as to what post retirement benefits were paid and are being paid by virtue of his services in the Armed Forces. Later, the matter was directed to be listed in due course.

Consideration by the Court

22) Heard the counsel for the parties.

23) Counsel for the appellant reiterated the submissions before the learned Single Judge and challenged his order contending that there was no necessity to conduct any enquiry in terms of the letter dt. 17.03.2022 and the learned Single Judge erred in directing to complete such an enquiry.

24) Counsel for the State Government appearing for the respondents refuted the said contentions and contended that the appellant was never appointed regularly since there is no such appointment order produced by him, and he cannot take advantage of some mistake committed by the respondents and claim the status of a regular employee.

Reliance is placed on the District Rural Development Agency Employees Death cum Retirement Gratuity and Leave Encashment Regulations of Tripura, 2014 by the respondents and it is pointed out that as per Clause 1(2)(ii) of the said Regulations they do not apply to employees appointed on contract.

25) To a pointed question put to the counsel for the appellant as to the what is the proceeding issued regularizing the services of the appellant/ 'regularly' appointing the appellant to the post of Accounts Officer, he stated that there is no such document.

26) Counsel for the appellant did not deny that the appellant's initial appointment was only on contract basis for one year on purely temporary basis, which was being extended from time to time, as can be seen from the memo dt. 18.06.2002 and memo dt. 22.09.2004 whereby the appellant was allowed to continue in service up to the age of attaining 58 years.

27) But at no point of time were petitioner's services regularized. There is no proceeding issued by the respondents making him a regular employee though in a list dt. 20.08.2013 it appears that the appellant was mentioned as having been regularly appointed, which is factually incorrect.

28) Consequently, as per the 2014 regulations since the appellant continued working on contract basis only, he cannot claim encashment of leave or death-cum-retirement gratuity or even pension which is admissible only to regular employees taking advantage of the mistake committed by the respondents in showing him incorrectly as a regular appointee in certain proceedings.

29) In the proceeding dt. 27.07.2023 also the respondent No.1 has taken the view that the appellant was discharging his duties as purely contractual employee, and death-cum-retirement gratuity and leave encashment are not payable to him, particularly when there is no order of regularization or absorption of the appellant to the sanctioned post of Accounts Officer, DRDA.

30) Counsel for appellant contended that appointing him on contractual basis and continuing him for a long time on that basis, though there was a sanctioned post of Accountant, is illegal and arbitrary and violates Art.14 of the Constitution of India.

31) The appellant, while in service, has never approached this Court challenging the said action of the respondents. Now after his services were not extended after 31.12.2021, he cannot at this belated stage seek such a relief.

32) But the stand of the respondents in the proceeding dt.27.7.2023 that appellant's service ended on 05.12.2019 because the contract was valid only up to that period, cannot be correct because there is no dispute that he was made to continue to work till 31.12.2021.

33) Having extracted work from him up to that date, the respondents cannot deny him salary for the period from 5.12.2019 to 31.12.2021.

34) According to the appellant, no salary was paid for the period July, 2021 to December, 2021 and this is not denied.

35) That apart, according to the appellant, there was a Revision of Pay and he is entitled to revised pay for the period October, 2018 to May, 2020 and also arrears of revised pay from 01.07.2021. To this limited extent, the respondents are not correct in denying the same till 31.12.2021.

36) Since the appellant has retired from service on 31.12.2021, at this point of time, it may not be necessary to conduct any enquiry as directed in the letter dt. 17.03.2022, but if he has received any amounts as pension pursuant to the Pension Payment Order issued to him, he is bound to refund the same along with gratuity and capitalized value of pension.

37) We also do not agree with appellant's contention that respondents ought to be directed to upload/record the date of retirement/release of the appellant from District Rural Development Agency (for short, DRDA), Unakoti Tripura, i.e. 31.12.2021 in the Employees' Provident Fund (for short, EPF) portal to enable him to receive the EPF as well as the EPF pension as admissible. No material is placed before us to show his enrolment in the EPF. Also the competent authority under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 has not been arrayed as a party in the Writ Petition and also in the Writ Appeal and so no such relief can be granted against the said authority or the respondents.

38) Thus the judgment of the learned single judge in W.P.No.607 of 2023 is modified and the Writ Appeal is partly allowed as under:

(i) The appellant shall submit to the respondent within 4 weeks, the calculation of arrears of salary including pay revisions which have happened in October, 2018 and 1.7.2021;

(ii) The respondents shall furnish within 4 weeks to the appellant a calculation of pension, gratuity and capitalized value of pension he had received from the respondents;

(iii) The appellant shall be paid by the respondents within 8 weeks from today, the arrears of salary from October 2018 till the date of his retirement on 31.12.2021 after revising his salary for the said period as per the pay revisions which have happened in October, 2018 and 1.7.2021, after deducting the salary and allowances already paid to him with interest at 7% p.a from the date he is entitled to receive it till actual date of payment;

(iv) The appellant shall refund to the respondents within 8 weeks the retiral benefits such as pension, gratuity and capitalized value of pension, if any, paid to him to the respondents pursuant to the judgment of the learned single Judge with interest at 7% p.a from the date the appellant received the same till date of refund by him to respondents;

(v) Amounts in para (iii) and (iv) can be adjusted/set off against each other and after such set off/adjustment, whoever is found due to pay the other, the said party shall make the payment;

(vi) The inquiry directed by the learned single Judge pursuant to the communication dt.17.3.2022 is set aside.

39) The Writ Appeal is partly allowed to the extent indicated above.

Pending application(s), if any, also stands disposed of.

(S. DATTA PURKAYASTHA, J) (M.S. RAMACHANDRA RAO, CJ)

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