

**IN THE HIGH COURT OF TRIPURA**  
**AGARTALA**  
**WP(C)No.854 of 2021**

**Sri Pintu Chowdhury,**  
son of late Amalendu Chowdhury,  
resident of Village & P.O. Anandanagar,  
Agartala, District : West Tripura, Pin : 799004

..... **Petitioner(s)**

- **V e r s u s** -

**1. The Union of India,**  
represented by the Secretary  
to the Government of India,  
Ministry of Textiles, Udyog Bhavan,  
New Delhi, 110001

**2. The Director (East Zone),**  
Weavers' Service Centre, Government of India,  
Ministry of Textiles, IIHT Campus, Jawahar Nagar,  
Khanapara, National Highway No.37, Guwahati-781022

**3. The Development Commissioner for Handlooms,**  
Ministry of Textiles, Udyog Bhavan, New Delhi-110001

**4. Assistant Director,**  
Weavers' Service Centre, Gurkhabasti,  
Agartala, West Tripura, Pin - 799006

**5. Deputy Director (Head of Office),**  
Weavers' Service Centre, Gurkhabasti,  
Agartala, West Tripura, Pin - 799006

**6. The State of Tripura,**  
represented by the Secretary,  
Government of Tripura,  
Tribal Welfare Department,  
Kunjaban, New Capital Complex,  
Agartala, West Tripura, Pin - 799006

**7. Tripura Tribal Welfare Residential  
Educational Institutions Society,**  
under Tribal Welfare Department,

Government of Tripura,  
represented by its Member Secretary,  
Gurkhabasti, Agartala, West Tripura,  
Pin - 799006

**8. Member Secretary,**  
Tripura Tribal Welfare Residential  
Educational Institutions Society,  
Tribal Welfare Department,  
Government of Tripura,  
Gurkhabasti, Agartala, West Tripura,  
Pin - 799006

..... Respondent(s)

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For Petitioner(s)	:	Mr. R. Datta, Adv.
For Respondent(s)	:	Mr. B. Majumder, Asst. S.G. Mr. S. Saha, Adv.
Date of Hearing and Judgment & Order	:	04.02.2022
Whether fit for reporting	:	YES

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**HON'BLE MR. JUSTICE S. TALAPATRA**

**JUDGMENT & ORDER(Oral)**

Heard Mr. R. Datta, learned counsel appearing for the petitioner as well as Mr. B. Majumder, learned Asst. S.G. appearing for the respondents No. 1 to 5 and Mr. S. Saha, learned counsel appearing for the respondents No.7 and 8. There is no representation for the respondent No.6.

2. By means of this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order No.WSC/GAU/Admn.1(4)/19/Vol.II/2236 dated 16.11.2021 [Annexure-24 to the writ petition] whereby the service of the petitioner in the post of Junior Weaver, Group-C (non-gazetted) has been terminated with immediate effect. The

petitioner has also challenged the order under No.WSC/AGT/P-135/21/1008 dated 24.11.2021 [Annexure-25 to the writ petition] issued by the respondent No.5. By the said order, the petitioner was relieved from the service on 24.11.2021 [afternoon] pursuant to the order of termination dated 16.11.2021. Further, the petitioner has urged this court to reinstate him in service with all consequential benefits and arrears of salary.

3. It has to be noted at the outset that by the interim order dated 29.11.2021, the respondents were directed to allow the petitioner continue in his service and hence, the petitioner is in service notwithstanding the order of termination dated 16.11.2021.

4. It is the second round of litigation by the petitioner. In the year 2017, the petitioner filed a writ petition being WP(C)No.1240/2017 [Pintu Chowdhury versus Union of India and Others]. In that case, the petitioner had challenged the denial of age relaxation on considering him as the government servant. There is no denial that the petitioner was serving as the Craft teacher in Tripura Tribal Welfare, Residential Educational Institutions Society after his regular selection. It is not in dispute that the said Society is under pervasive control of the State Government. This court having *prima facie* materials had occasion to observe as follows :

**"5. In the given facts and circumstances, there appears no justification to oust him from the post which he was holding for all practical purposes after his regular selection and, at least, as he was serving in a Society which is under pervasive control of the Government having trappings of the Govt. servant entitled for age relaxation up to 40 years to participate in the selection process. Though the stay application was filed by him, no interim order was passed by the court at the**

relevant point of time but as he is out of employment at this moment, to protect his right, he need indulgence of this Court for interim protection pending hearing of the writ petition.

6. Fresh notices need not be issued since the respondents are duly represented. After having heard counsel for the parties, I am *prima facie* of the view but without expressing any opinion on merit that the petitioner was never at fault and he was earlier serving in a Society which is under pervasive control of the government and he left that job because he was offered better appointment to the post of Junior Weaver in Weavers Service Centre, Ministry of Textile, Govt. of India, after going through the process of selection and if he is not being allowed to continue pending outcome of the writ petition his right will certainly jeopardize and needs indulgence of this court and the order impugned dt.30.8.2017 deserves to be stayed pending hearing of the writ petition. It is also informed that no incumbent has been offered appointment after passing of the order impugned dt. 30.08.2017.

7. Accordingly, it is ordered that operation and future effect of the order dt.30.8.2017 Annexure-12 shall remain stayed and I direct the respondents to allow the petitioner to join on the post of Junior Weaver which he was holding prior to passing of the order impugned dt.30.8.2017 until further orders.”

5. At the time of disposing the said writ petition, this court had occasion to observe as follows :

“11. Admittedly, no hearing was granted to the petitioner before passing the said order. Apart from the impugned order being stigmatic and punitive, even the issue of age relaxation in favour of the petitioner was not free from doubt. The concerned department had to seek clarifications from the Government of Tripura as well as DoPT. Admitted position is that the petitioner was employed in a school which was run by an organization, which was constituted by the State Government for the special purpose of providing quality education to tribal students in remote areas and which organization was fully funded and administratively controlled by the State Government. The terms and conditions of service and other service rules governing the employees of the Society were adopted from the State Government model. Crucial question therefore would be in such a situation can the employee of such a Society claim age relaxation by extension of the provision on the premise that his status was akin to that of a Government servant. Division Bench of Punjab & Hariyana High Court, in case of *Sukhwinder Singh*(supra) has taken such a view. However, I would not like to conclude this issue in the present petition because for the reasons noted above, the impugned order is required to be set aside on the ground of non-granting of hearing.

12. There are other reasons why in the present case such a hearing would be necessary. As noted, the petitioner had resigned from his permanent post in a semi Government

organization. The petitioner, thus, had reasonable assurance of service tenure in his previous employment also. Having resigned from such a secured job, can the petitioner be told a year and a half after his appointment that his initial engagement itself was invalid since he was over aged. The petitioner can legitimately argue that if he had not made any misrepresentation about his age or his service, it would be inequitable to allow the department to terminate his service which would render him jobless from his previous employment also. Further, I find a reference in the affidavit-in-reply filed on behalf of the respondent Nos.1 to 4 that the petitioner had produced a certificate of belonging to OBC. However, that certificate was produced after time permitted for such purpose and therefore, not taken into account. It appears that independently of his status as being in Government service or equivalent to Government service, as an OBC candidate, he would be entitled to age relaxation. If that be so, should the service of the petitioner be terminated when on the strength of his OBC status he would any way, be within the age limit, simply because he could not produce such certificates within the time.

13. All in all, all these aspects need to be gone into at the first instance by the department. For such purpose, impugned order dated 30.08.2017 is set aside. The petitioner shall make a detailed representation to respondent No.2, in which he will be allowed to take all his contentions factual as well as legal. Such a representation shall be made within a period of 8 (eight) weeks from today. The respondent No.2 shall consider such representation and pass a speaking order thereon. If such order is in any manner adverse to the petitioner, it would be open for him to file a fresh petition challenging the same on all grounds."

6. It may be noted that by the order dated 30.08.2017 as referred above, the petitioner was terminated from his service as Junior Weaver. But since, the said order has been set aside, the petitioner continued to serve in the said capacity. Thereafter, as would be evident from the impugned order dated 16.11.2021 [Annexure-24 to the writ petition] that the petitioner has been given the opportunity to submit a representation, which was filed on 16.09.2020, requesting the competent authority to allow him age relaxation for appointment to the post of Junior Weaver at par with the Government servant as his status as an employee under Tripura Tribal Welfare, Residential Educational Institutions

Society [TTWREIS], inasmuch as TTWREIS is 100% financed and managed by the Government of Tripura. The petitioner had referred a judgment of the Division Bench of the Punjab and Haryana High Court and Delhi High Court in the representation covering the similar issues. On the purported examination of the said representation dated 16.09.2020, the Director, East Zone of Weavers' Service Centre had turned down the said representation by holding that the employees of TTWREIS cannot be treated as the Government servants within the meaning of Rule 2(h) of CCS(CCA) Rules, 1965. It has been noted in the said order dated 16.11.2021 that the said position has been confirmed by the Additional Secretary to the Government of Tripura, Tribal Welfare Department. It has been observed in the said order as follows :

**"Moreover, relaxation of upper age limit for Government servants is applicable only to the Central Government Civilian Employees holding civil posts and the same is not applicable to be personnel working in autonomous/statutory bodies, Public Sector undertaking etc. which are governed by regulations/statute issued by the concerned administrative Ministries/Departments as per the instructions/guidelines issued by DoP&T vide para No.3 of OM No.15012/2/2010-Estt(D) dated 27th March, 2012."**

While passing the said order dated 16.11.2021, the judgments of the Punjab and Haryana High Court and the Delhi High Court have been discarded on observing that those are not germane to the context.

Having observed thus, the service of the petitioner has been terminated again by the said order dated 16.11.2021 with immediate effect.

By the order dated 24.11.2021, the petitioner was relieved from his service pursuant to the order dated 16.11.2021. As stated earlier, the petitioner has challenged both the orders.

7. Mr. R. Datta, learned counsel appearing for the petitioner has submitted that by the memorandum dated 08.11.2010 [Annexure-1 to the writ petition], the petitioner was appointed as the Craft Teacher by TTWREIS. Accordingly, the petitioner joined the said post and served the respondents No.7 and 8 to their satisfaction. The petitioner was attracted by the advertisement of the Central Employment Exchange as published in the Employment News dated 1<sup>st</sup> August, 2015 [Annexure-2 to the writ petition]. By the said advertisement, applications were invited for appointment to the post of Junior Weaver in the scale of pay of Rs.5,200-20,200/- with Grade Pay of Rs.2,800/-. The petitioner had applied through the proper channel. The petitioner obtained the no-objection Certificate from the competent authority [Annexure-7 to the writ petition] for purpose of appearing in the selection process for the post of Junior Weaver.

8. There is no dispute that the petitioner was appointed in the said post of Junior Weaver by the memorandum dated 18.01.2016 [Annexure-8 to writ petition]. Accordingly, the petitioner had tendered technical resignation from his service for joining the new post. The petitioner was relieved from his service by the release order dated 28.01.2016 [Annexure-9 to the writ petition] to enable him join the new service as Junior Weaver in the Weavers' Service

Centre, Agartala under Ministry of Textiles, Government of India. Pursuant to the said release order dated 28.01.2016, the petitioner had joined the said post on 29.01.2016 [forenoon] with all testimonials. Accordingly, the order dated 09.03.2016 [Annexure-11 to the writ petition] was issued accepting the joining of the petitioner and placing him on probation for two years from the date of his appointment.

9. But all on a sudden, by the order dated 30.08.2017 [Annexure-12 to the writ petition] the respondent-Weavers' Service Centre, Agartala had apprised the petitioner that the Tribal Welfare Department, Government of Tripura has by a communication confirmed that the employees working under TTWREIS do not bear the status of Government servants within the meaning of Rule 2(h) of CCS (CCA) Rules. On the basis of the said clarification, the matter of granting relaxation of age by considering the petitioner as the Government servant was placed for opinion of the Department of Personnel and Training, Government of India. The DoPT had clarified the matter as under :

**"As clarified by Tribal Welfare Department, Govt. of Tripura, the employees of TTWREIS do not bear the status of Government servants as defined under Rule 2(h) of CCS(CCA) Rules. Therefore, the age relaxation for the post of Junior Weaver in WSC up to the age of 40 years for Government servants cannot be applied in the case of employees working under in Tripura Welfare Residential Educational Institutions Society [TTWREIS] Appointment of Shri Pintu Chowdhury, while working, in EMR School, run by TTWREIS, has not legal sancity."**

10. In view of the said opinion, the *conduct* of seeking relaxation by the petitioner on the basis of his appointment as the Craft teacher was stated to be the act of major misconduct and the petitioner was terminated from the

service. The said order dated 30.08.2017 was set aside by this court remitting the matter back for reconsideration of the respondent No.2 in particular, after affording opportunity of hearing to the petitioner. As stated earlier, by the order dated 16.11.2021 [Annexure-24 to the writ petition], the respondents have again terminated the petitioner with immediate effect and consequentially, the petitioner was relieved from his service by the order dated 25.11.2021.

11. The respondents No.1 to 5 have filed their reply on 20.01.2022 stating *inter alia* that the petitioner was 38 years 8 months on the day of filing the application but the required age for the post was 30 years, relaxable upto 3 years for OBC candidates and 5 years for SC candidates against the posts reserved for them as per extant Government guidelines. Upper age limit was further relaxable upto 10 years for *government servant* as stipulated in the notified recruitment Rules [Annexure-R/1 to the reply filed by the respondents No.1 to 5]. In this regard, there is no dispute. Therefore, unless the relaxation of age was granted to the petitioner for being *the government servant*, he was not eligible to be appointed as he had crossed the maximum age limit. After the petitioner was placed on probation, the Weavers' Service Centre, Guwahati received a complaint from one Utpal Sutradhar stating that the relaxation of age as granted to the petitioner as the Government servant is untenable as the petitioner cannot be stated of holding a government post inasmuch as where the petitioner was serving before making the application for appointment to the post of Junior Weaver is not a Government Department but an Educational Society.

12. In that backdrop, the Deputy Commissioner, Handlooms, Government of India had referred the matter for clarification whether the employees of TTWREIS bear the status of Government servants or whether they could avail age relaxation admissible to the Government employees. The Tribal Welfare Department, Government of Tripura clearly opined that employees of TTWREIS do not bear the status of the Government servant within the meaning of Rule 2(h) of the CCS(CCA) Rules. Thereafter, the Deputy Commissioner, Handlooms placed the matter for opinion of the Department of Personnel and Training [DoPT in short]. The DoPT had opined that the petitioner cannot be granted the relaxation as he was not a Government servant and accordingly, the termination followed. Hence, there is no illegality. The writ petition is devoid of merit and liable to be dismissed.

13. The opinion of the Tribal Welfare Department, Government of Tripura is available in the communication dated 30.03.2017 [Annexure-R/6 to the reply filed by the respondents No.1 to 5]. The respondents No.7 and 8 filed a separate reply by stating inter alia in para-13 as follows :

**"13. That, with respect to paragraph No.14, it is stated that the Tripura Tribal Welfare Residential Educational Institutions Society (in short TTWREIS) was established under the Societies Registration Act, 1860 under the pervasive administrative control of the Tribal Welfare Department, Government of Tripura. The employees of TTWREIS Society are governed by the relevant rules of State Govt. as adopted from time to time by the Society through its Board of Governors meetings and it has separate Bye-Law for conduct of business and management of the affairs of the Society and for furtherance of its objects. The prime object of the Society (TTWREIS) is to establish, maintain, control and running Ekalavya Model Residential Schools, Ekalavya Model Day Boarding School, Residential School, Ashram Schools in the State of Tripura. It receives 100% recurring grant from National Education Society for Tribal Students (NESTS),**

**Ministry of Tribal Affairs, Govt. of India to run Ekalavya Model Residential Schools (EMRSs) and Ekalavya Model Day Boarding School (EMDBS) and 100% grant by way of 'Grants to Ashram Schools' to run Ashram Schools and Residential School in the State of Tripura. The employees of TTWREIS are being paid salaries at par with the employees of State Government. All the EMR Schools are affiliated to the Central Board of Secondary Education (CBSE) and the schools are also covered under Right to Education Act, 2009. All the Teaching & Non-Teaching posts under the TTWREIS have been created with due concurrence of the Finance Department, Government of Tripura. The TTWREIS has also adopted the Tripura State Civil Services (Conduct) Rules, 1988 and Tripura State Civil Services (Leave) Rules, 1986. It is pertinent to mention that the TTWREIS does not bear any proprietary status and it is a non-profitable organisation working effortlessly for establishing quality education and also to ensure all round development of tribal students so as to enable them to access the best opportunities in education and to bring them at par with the general population."**

14. Mr. R. Datta, learned counsel appearing for the petitioner has submitted that it will be apparent from the reply filed by the respondents No.7 and 8 that TTWREIS is under the pervasive administrative control of Tribal Welfare department, Government of Tripura, even though the said Society is managed by a separate Bye-Laws for conduct of business and management of the affairs of the society. It receives 100% recurring grant from National Education Society for Tribal Students Ministry of Tribal Affairs. According to Mr. Datta, learned counsel, the said Society is the extension of the Government Department and hence, its employees are entitled to be deemed as the Government servants, irrespective of what the Additional Secretary to the Tribal Welfare Department, Government of Tripura has opined. In support of his contention, Mr. Datta, learned counsel has referred a decision of the Punjab and Haryana High Court in **Sukhwinder Singh versus State of Punjab and Another** [the judgment dated 26.03.2013 delivered in Civil Writ Petition

No.19589/2012]. In **Sukhwinder Singh** (supra) the Punjab and Haryana High Court was considering whether denial of relaxation of age to the employees of Corporation, Boards and Public Sector Undertakings is constitutionally valid or not. The said question has been answered in the following manner :

**"9. Indisputably, while filling up the Faculty positions in the Medical College, the object of the Government and the Union Public Service Commission would be to select the best persons. For achieving this object, it would be reasonable to have a wide field of choice so that eminent people from everywhere in the country are able to compete. It may be, as has been urged by the counsel for the petitioner that persons serving in the Government hospitals have to initially serve in rural dispensaries or in suburban areas. Yet, when they come to the Medical Colleges they discharge the same functions as are being performed by the members of the Faculty of the PGI. Thus, there is prima facie no basis for treating them differently."**

15. It is to be mentioned here that the decision of the apex court in **Union Public Service Commission versus Dr. Jai Dev Wig** reported in **1998 (4)S.C.T. 275** has been referred in that report. But the fact situations, this court should take note, are entirely different vis a vis the case in hand.

16. Mr. Datta, learned counsel has further referred a decision of the Delhi High Court in **Sushil Kumar Rajput versus Director of Education and Others** [judgment dated 24.11.2006 delivered in WP(C)No.13782/2004]. In that case, the Delhi High Court considered whether an employee of Municipal Corporation of Delhi can be deemed to be the government servant for purpose of relaxation of age. Having referred to two apex court decisions viz. **Union of India and Others versus R.C. Jain and Others** reported in **AIR 1981 SC 951** and **Municipal Corporation of Delhi versus Birla Cotton Spinning & Weaving Mills Delhi** reported in **(1968) 3 SCR 251 : AIR 1968 SC 1232**. It

has been held that those bodies function under some autonomy but they do as well function under supervision of the Government. Finally, in **Sushil Kumar Rajput**(supra), Delhi High Court has observed as follows :

**"17. From the foregoing, it would be seen that MCD as a local authority has public functions akin to government, with certain degree of autonomy. It would thus fall within the ambit of 'other government organization' and specially keeping in view that all group A appointments are made in consultation with UPSC, for sanction of prosecution they are treated as public/government servants. Even for the purposes of Article 12 of the Constitution of India, MCD is treated as a public authority. It is an instrumentality or agency of the government, exercising statutory powers and performing public functions.**

**18. Accordingly we hold that MCD will fall within the ambit of 'other government organization'. Orders dated 21.7.2004 and 3.8.2004 are quashed. Petitioner is held eligible for age relaxation and his appointment as PET with respondent No. 1 is held legal and in order. Respondent No. 1 is directed to reinstate the petitioner in service forthwith. In the peculiar circumstances of this case, petitioner would not be entitled to back wages but would be entitled to have the period from 21.7.2004 counted for purposes of determination of his seniority and pension."**

17. Mr. B. Majumder, learned Asst. S.G. appearing for the respondents No.1 to 5 in order to repel the submission of Mr. Datta, learned counsel appearing for the petitioner has relied on a decision of the apex court in **Delhi Subordinate Services Selection Board and Another versus Seema Kapoor** [order dated 22.07.2021 delivered in Civil Appeal No.4461/2021]. In that decision, the apex court has held unambiguously as follows :

**"8. We have heard learned counsel for the parties and find that the order passed by the Central Administrative Tribunal and that of the High Court are not sustainable. Firstly, the High Court has quoted a wrong provision in the order passed relating to subsequent advertisement. Secondly, the benefit of age relaxation is permissible for government servants and departmental candidates. It is not even the stand of the respondent that she is a government servant and, rightly so, as she is employed in an autonomous body i.e. Municipal Corporation established under a specific statute. The expression 'Departmental Candidates' is in respect of the candidates who are working in the concerned Department i.e.**

**Education. The Circular of the Government of India dated 27.3.2012 has made it explicitly clear that the benefit of age relaxation is only meant for civil employees of the Central Government and not to the employees of the autonomous bodies, public sector undertakings etc. Therefore, the respondent, as an employee of the autonomous body, i.e. the Corporation, is not entitled to age relaxation either as a departmental candidate or as a government servant."**

18. Moreover, Mr. Majumder, learned Asst. S.G. has, having referred to **Tirumala Tirupati Devasthanams versus K. Jotheeswara Pillai and Another** reported in **(2007) 9 SCC 461** contended that there is no rule to consider the services of the employees of the societies like TTWREIS for purpose of relaxation. Hence, there being no statutory provisions or rules providing exemption from eligibility criteria, no mandamus can be issued against the respondents No.1 to 5 for considering the case of the writ petitioner by granting him relaxation of age for direct recruitment.

19. Having appreciated the submissions of the learned counsel for the parties and scrutinised the records as produced along with the writ petition and the replies filed by the respondents what has surfaced is that unless the petitioner is deemed or treated as the Government servant, he is not entitled to exemption from any provision of the recruitment rules and he is also not entitled to the age relaxation by 10 years. Thus, the moot question that falls for consideration of this court is whether the said Society namely Tripura Tribal Welfare Residential Educational Institutions Society [TTWREIS] where the petitioner was appointed as the Craft Teacher can be treated as a Government Department or not. The Society has been promoted by the Tribal Welfare Department for the object of enhancing the capacity of employability of the

target group. Funds are flowing from different sources. But admittedly the society is governed by its bye-laws. The said society may be treated as the instrumentality of the State, but not as the Government Department.

20. This court has keenly perused the relevant materials to find out whether the said Society is the Government Department or not. But it appears that it is a Society promoted by the Government but it is not a Government Department and as such, in view of the decision as rendered by the apex court in **Delhi Subordinate Services Selection Board** (supra), the petitioner cannot be treated as the Government servant and consequentially, his selection as the Junior Weaver on relaxation of age was not legal as the petitioner was not entitled to any relaxation.

As corollary, the writ petition stands dismissed. The interim order as passed on 29.11.2021 stands vacated.

There shall be no order as to costs.

**JUDGE**

