

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) 591 of 2023**

**Shri Sourav Datta**

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

**Versus**

**District & Sessions Judge, West Tripura and another**

**.....Respondent(s)**

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For Petitioner(s)	: Mr. G.K. Nama, Advocate.
For Respondent(s)	: Mr. BN Majumder, Senior Advocate. Mr. B. Paul, Advocate.

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**HON'BLE MR. JUSTICE T. AMARNATH GOUD**

**ORDER**

**21.09.2023**

This instant petition has been filed by the petitioners under Article 226 of the Constitution of India seeking the following reliefs:

- "i) Issue rule calling upon the respondents to show cause as to why a writ of mandamus and/or similar order in the nature thereof shall not be issued declaring that the petitioner is entitled to notional seniority from the date he should have been appointed.
- ii) Issue rule calling upon the respondents to show cause as to why a writ of Mandamus and/or similar order in the nature thereof shall not be issued to treat the petitioner as a member of the pension scheme under the existing Central Civil Services (pension) Rules, 1972 as adopted in the state of Tripura.
- iii) Issue rule asking the respondents to show cause as to why a writ of Mandamus and/or similar order in the nature thereof shall not be issued directing them to proceed in the way the central Government has proceeded to obtain one-time option from its employees regarding applicability of new pension scheme."

**[2]** Heard learned counsel appearing for the parties.

**[3]** It is the case of the petitioner that for filling up of the post of LDC under the Tripura District Courts' Ministerial Establishment, advertisement was published and accordingly final merit list dated 11.01.2017 was prepared.

Subsequently, one after another relinquished and he filed a writ petition in the High Court of Tripura seeking appointment as during the validity period of said merit list one post was vacated due to resignation tendered by an appointee and the petitioner was at the next to be entitled for getting appointment. As per the order of the High Court, the petitioner got appointment letter dated 05.09.2018 and as per notification dated 13.07.2018 issued by the Finance Department, Government of Tripura, the employees who joined the service of the State Government on or after 1<sup>st</sup> July 2018 shall not be governed by the existing Central Civil Services (Pension) Rules, 1972 which was adopted in the State of Tripura. That is the employees joining the service on or after 1<sup>st</sup> July 2018 shall not be entitled to general provident fund.

**[4]** The petitioner made a representation, against the Finance Department's notification dated 13.07.2018 saying that his appointment was on the basis of final merit list dated 11.01.2017 hence the new pension scheme is not applicable to him. The petitioner's representation has been rejected. Thereafter, Government of India by memorandum dated 03.03.2023 has sought one-time option from its employees in respect of applicability of new pension scheme. This office memorandum dated 03.03.2023 says that in all cases where the central Government employees who were appointed against a post or vacancy which was advertised/notified for recruitment prior to the cut-off date fixed for implementation of new pension scheme and are covered under the new pension scheme, may be given an opportunity for exercising one-time option within 31.8.2023 to be covered under the new CCS (Pension) Rules.

**[5]** Mr. BN Majumder, learned senior counsel appearing for the respondents contends that the writ petition is devoid of merits and the same needs to be dismissed on the ground of laches.

**[6]** It is seen from record that the petitioner represented before the respondent(s) vide representation dated 27.05.2020 seeking consideration of application of the existing Central Civil Services (Pension) Rules, 1972 (as adopted in the State of Tripura) and the respondents vide order dated 19.09.2020 communicated to the petitioner that his request could not be considered as per Rules/Notification No.F.8(1)-FIN(G)/2004(P-I) dated 13.07.2018 of the Finance Department, Government of Tripura, as Shri Sourav Datta (petitioner herein), L.D.C. of District Record Room is governed by NPS and offer of appointment was issued in that line which was duly accepted by him. It has also been reflected in the said order that the petitioner also submitted an undertaking to the effect that he will be governed by new Pension Rules.

**[7]** The petitioner has not challenged the said Order dated 19.09.2020 and strangely, the memorandum dated 03.03 2023 issued by the Government of India is under challenge. There is no proceeding or action initiated by the respondents depriving the petitioner of his legitimate right by placing reliance on the said memorandum dated 03.03 2023. This is only a subsequent memorandum which came into light issued by the Government of India in its Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare but, in the instant writ petition they have not been made party.

**[8]** Unless there is any expressed order issued due to which the petitioner is aggrieved, it cannot be said that the petitioner is aggrieved by any such impugned proceeding and his rights are infringed. To this Court, no such order is under challenge and no such communication is made to the petitioner. This Court draws an inference that there is no cause of action. The order of rejecting the representation of the petitioner which was in September, 2020 is the one much prior to the memorandum dated March, 2023 and thus, there is no reference in the order dated

19.09.2020 regarding memorandum issued by the Government of India dated 03.03.2023. The order dated 19.09.2020, which is referred by the learned counsel in this writ petition was passed more than 3 years ago and there is no averment in the affidavit explaining the delay and the relevance for placing it on record. Hence, the action amounts to laches. Even examining the Order dated 19.09.2020 issued by the respondent, it is clearly indicated that the petitioner has submitted an undertaking to the effect that he will be governed by new Pension Rules and now he cannot turn back. The doctrine of estoppel comes into play against the petitioner.

For the reasons stated above, the writ petition is devoid of merits and the same is liable to be dismissed. Resultantly, the same is dismissed.

As a sequel, pending application(s), if any, shall also stand closed.

**JUDGE**

*Sabyasachi. G.*