

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) 643 OF 2022**

**All Tripura EPS Pensioners' and Employees' Association,**

A registered Trade Union having its registered office near Krishnanagar Club, Pragati Road, Agartala, West Tripura, subsequently shifted to Bipani Bitan Complex, Room No. 344 (2<sup>nd</sup> Floor), Durga Chowmuhani, P.O. Ramnagar, Agartala- 799001, represented by its Secretary- Sri Durgesh Ranjan Choudhury

----**Petitioner**

Versus

**1. The State of Tripura,** represented by the Secretary, Finance Department to the Government of Tripura, Civil Secretariat, P.O. New Capital Complex, Agartala-799010, District- West Tripura

**2. Tripura Road Transport Corporation Limited,**(A Govt. of Tripura Undertaking), Krishnanagar,, PIN-799001, Agartala, District- West Tripura, represented by its Managing Director

----**Respondent(s)**

**WP(C) 644 OF 2022**

**All Tripura EPS Pensioners' and Employees' Association,**

A registered Trade Union having its registered office near Krishnanagar Club, Pragati Road, Agartala, West Tripura, subsequently shifted to Bipani Bitan Complex, Room No. 344 (2<sup>nd</sup> Floor), Durga Chowmuhani, P.O. Ramnagar, Agartala- 799001, represented by its Secretary- Sri Durgesh Ranjan Choudhury

----**Petitioner**

Versus

**1. The State of Tripura,** represented by the Secretary, Finance Department to the Government of Tripura, Civil Secretariat, P.O. New Capital Complex, Agartala-799010, District- West Tripura

**2. Tripura Tea Development Corporation Limited,** (A Govt. of Tripura Undertaking), Old Secretariat-799001, Agartala, District- West Tripura, represented by its Managing Director

----**Respondent(s)**

**WP(C) 645 OF 2022**

**All Tripura EPS Pensioners' and Employees' Association,**

A registered Trade Union having its registered office near Krishnanagar Club, Pragati Road, Agartala, West Tripura,

subsequently shifted to Bipani Bitan Complex, Room No. 344 (2<sup>nd</sup> Floor), Durga Chowmuhani, P.O. Ramnagar, Agartala- 799001, represented by its Secretary- Sri Durgesh Ranjan Choudhury

----**Petitioner**

Versus

**1. The State of Tripura**, represented by the Secretary, Finance Department to the Government of Tripura, Civil Secretariat, P.O. New Capital Complex, Agartala-799010, District- West Tripura

**2. Tripura Rehabilitation and Plantation Corporation Ltd.**, (A Govt. of Tripura Undertaking), Gurkhabasti-799002, Agartala, District- West Tripura, represented by its Managing Director

----**Respondent(s)**

**WP(C) 646 OF 2022**

**All Tripura EPS Pensioners' and Employees' Association,**

A registered Trade Union having its registered office near Krishnanagar Club, Pragati Road, Agartala, West Tripura, subsequently shifted to Bipani Bitan Complex, Room No. 344 (2<sup>nd</sup> Floor), Durga Chowmuhani, P.O. Ramnagar, Agartala- 799001, represented by its Secretary- Sri Durgesh Ranjan Choudhury

----**Petitioner**

Versus

**1. The State of Tripura**, represented by the Secretary, Finance Department to the Government of Tripura, Civil Secretariat, P.O. New Capital Complex, Agartala-799010, District- West Tripura

**2. Tripura Handloom and Handicrafts Development Corporation Limited** (A Govt. of Tripura Undertaking), MBB Sarani-799007, Agartala, District- West Tripura, represented by its Managing Director

----**Respondent(s)**

**WP(C) 647 OF 2022**

**All Tripura EPS Pensioners' and Employees' Association,**

A registered Trade Union having its registered office near Krishnanagar Club, Pragati Road, Agartala, West Tripura, subsequently shifted to Bipani Bitan Complex, Room No. 344 (2<sup>nd</sup> Floor), Durga Chowmuhani, P.O. Ramnagar, Agartala- 799001, represented by its Secretary- Sri Durgesh Ranjan Choudhury

----**Petitioner**

Versus

**1. The State of Tripura**, represented by the Secretary, Finance Department to the Government of Tripura, Civil Secretariat, P.O. New Capital Complex, Agartala-799010, District- West Tripura

**2. Tripura Schedule Tribe Co-operative Development Corporation Limited** (A Govt. of Tripura Undertaking), Lake Chowmuhani, Krishnanagar-799001, Agartala, District- West Tripura, represented by its Managing Director

----Respondent(s)

**WP(C) 648 OF 2022**

**All Tripura EPS Pensioners' and Employees' Association,**

A registered Trade Union having its registered office near Krishnanagar Club, Pragati Road, Agartala, West Tripura, subsequently shifted to Bipani Bitan Complex, Room No. 344 (2<sup>nd</sup> Floor), Durga Chowmuhani, P.O. Ramnagar, Agartala- 799001, represented by its Secretary- Sri Durgesh Ranjan Choudhury

----Petitioner

Versus

**1. The State of Tripura**, represented by the Secretary, Finance Department to the Government of Tripura, Civil Secretariat, P.O. New Capital Complex, Agartala-799010, District- West Tripura

**2. Tripura Small Industries Corporation Limited** (A Govt. of Tripura Undertaking), Kunjaban Colony, P.O. Abhoynagar-799005, Agartala, District- West Tripura, represented by its Managing Director

----Respondent(s)

**WP(C) 670 OF 2022**

**All Tripura EPS Pensioners' and Employees' Association,**

A registered Trade Union having its registered office near Krishnanagar Club, Pragati Road, Agartala, West Tripura, subsequently shifted to Bipani Bitan Complex, Room No. 344 (2<sup>nd</sup> Floor), Durga Chowmuhani, P.O. Ramnagar, Agartala- 799001, represented by its Secretary- Sri Durgesh Ranjan Choudhury

----Petitioner

Versus

**1. The State of Tripura**, represented by the Secretary, Finance Department to the Government of Tripura, Civil Secretariat, P.O. New Capital Complex, Agartala-799010, District- West Tripura

**2. Tripura Jute Mills Limited**, (A Govt. of Tripura Undertaking), Hapania, P.O. ONGC-799014, Agartala, District- West Tripura, represented by its Managing Director

----Respondent(s)

**WP(C) 671 OF 2022**

**All Tripura EPS Pensioners' and Employees' Association,**

A registered Trade Union having its registered office near Krishnanagar Club, Pragati Road, Agartala, West Tripura, subsequently shifted to Bipani Bitan Complex, Room No. 344 (2<sup>nd</sup> Floor), Durga Chowmuhani, P.O. Ramnagar, Agartala- 799001, represented by its Secretary- Sri Durgesh Ranjan Choudhury

----**Petitioner**

Versus

**1. The State of Tripura,** represented by the Secretary, Finance Department to the Government of Tripura, Civil Secretariat, P.O. New Capital Complex, Agartala-799010, District- West Tripura

**2. Tripura Industrial Development Corporation Limited,** (A Govt. of Tripura Undertaking), represented by its Managing Director

----**Respondent(s)**

**WP(C) 672 OF 2022**

**All Tripura EPS Pensioners' and Employees' Association,**

A registered Trade Union having its registered office near Krishnanagar Club, Pragati Road, Agartala, West Tripura, subsequently shifted to Bipani Bitan Complex, Room No. 344 (2<sup>nd</sup> Floor), Durga Chowmuhani, P.O. Ramnagar, Agartala- 799001, represented by its Secretary- Sri Durgesh Ranjan Choudhury

----**Petitioner**

Versus

**1. The State of Tripura,** represented by the Secretary, Finance Department to the Government of Tripura, Civil Secretariat, P.O. New Capital Complex, Agartala-799010, District- West Tripura

**2. Tripura State Co-operative Marketing Federation Ltd.,** Badharghat, A.D. Nagar, Agartala-799003, West Tripura, represented by its Managing Director

----**Respondent(s)**

**WP(C) 673 OF 2022**

**All Tripura EPS Pensioners' and Employees' Association,**

A registered Trade Union having its registered office near Krishnanagar Club, Pragati Road, Agartala, West Tripura, subsequently shifted to Bipani Bitan Complex, Room No. 344 (2<sup>nd</sup> Floor), Durga Chowmuhani, P.O. Ramnagar, Agartala- 799001, represented by its Secretary- Sri Durgesh Ranjan Choudhury

----**Petitioner**

Versus

**1. The State of Tripura**, represented by the Secretary, Finance Department to the Government of Tripura, Civil Secretariat, P.O. New Capital Complex, Agartala-799010, District- West Tripura

**2. Tripura Khadi and Village Industries Board**, (A Govt. of Tripura Undertaking), near Colonel Chowmuhani, P.O. Agartala-799001, District- West Tripura, represented by its Managing Director

----**Respondent(s)**

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|--|---|---|
| For Appellant(s)                                 | : | Mr. S. Saha, Advocate<br>Mr. S. Datta, Advocate   |
| For Respondent(s)                                | : | Mr. KC Bhattacharjee, Adv.<br>Mr. B.S. Bhowmik, Advocate<br>Mr. S. Bhattacharjee, Adv.<br>Mr. AK Pal, Advocate<br>Mr. D. Sarkar, Advocate<br>Ms. A. Chakraborty, Advocate<br>Mr. HC Chakraborty, Advocate |
| Date of hearing & delivery of judgment and order | : | <b>06.09.2022</b>   |
| Whether fit for reporting                        | : | <b>Yes</b>  |

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**HON'BLE MR. JUSTICE ARINDAM LODH**  
**JUDGMENT**

This batch of writ petitions are based on similar set of facts and involve common question of law, to avoid rigmarole are decided by this common judgment with the consent of learned counsel appearing for the parties.

**2.** By way of filing the above batch of writ petitions, the petitioner i.e. All Tripura EPS Pensioners' and Employees' Association, registered under Trade Act, 1926, represented by its Secretary has claimed the following reliefs:

- “(i) Admit the petition of the Petitioner;**
- (ii) Issue notice upon the respondents;**
- (iii) Call for records relevant to the subject matter;**
- (iv) Issue writ setting aside/quash the Order F.No. 8(2)-FIN(G)/2015 (P-II)/846-874, dated 28.08.2020 (Annexure-6) forthwith;**

- (v) Issue Writ directing the respondent no. 1 to provide similar Pension benefit as granted to the other similarly situated Tripura Govt. Undertakings namely Tripura Board of Secondary Education, Tripura Govt. aided private Schools;
- (vi) Issue Writ directing the respondent to grant minimum pension of Rs. 8,000/- (Eight Thousand) only to 4 retired pensioners including 2 Family Pensioners of TRTCL who are the members of petitioner Association;
- (vii) Pass such further order or orders, direction or directions as the Hon'ble Court may deem fit and proper having regards to the circumstances of the case."

**3.** Background fact is that, the petitioner had approached this court by filing a writ petition no. WP(C) 1084 of 2019 claiming above quoted similar reliefs. While disposing of the said writ petition vide order dated 13.09.2019 a Division Bench of this court had passed the following directions upon the respondents as well as to the petitioner-organization:-

**"Without going into the technicalities and the prayer made by the learned counsel being innocuous in nature, which the State in any case is duty bound to decide, we dispose of the instant writ petition with the following directions:**

- (a) The petitioners shall submit their fresh representation(s) before the appropriate authority(s).
- (b) Upon receipt thereof, the authority shall consider and decide the same, expeditiously, in accordance with law.
- (c) Preferably, such representation shall be considered and decided within a period of six months from the date of receipt thereof.
- (d) Needless to add, if the petitioners are still aggrieved, it shall be open for them to take recourse to such remedies as are otherwise available in accordance with law.
- (e) All issues including the maintainability of the writ petition in its present form, are left open.

**With these observations and directions, the present writ petition stands disposed of. Pending application(s), if any, also stands disposed of."**

**4.** Consequent to above directions, the State-respondents had constituted an expert committee. The expert committee had taken personal hearing of the petitioners through their representative i.e. the Secretary of the petitioners'

organization. The committee had considered the case of each of the Corporation.

**5.** Having gone through the report, it appears that the expert body of the State-respondents took note of the financial status of each of the Corporation. The committee also had taken into account the circumstances under which some of the autonomous bodies like Tripura Board of Secondary Education, the government aided school and educational institutions, the Agartala Municipal Corporation and Tripura Social Welfare Advisory Board are being paid pension benefit at par with the retired government employees. It is found that provision of providing pension benefit to these organizations has been made either by adopting the Civil Services (Pension) Rules, 1972 or introducing separate pension scheme.

**6.** It further comes to fore that these autonomous bodies had created separate scheme and had been able to generate own funds from their own contribution and opened subscriber accounts with specified schemes of the organization like LIC, banks etc. On the other hand, the constituted expert body finds that the petitioners have already retired from service, and are drawing pension under EPF scheme. After taking into consideration of various factors, the committee ultimately came to the following conclusion, which has been reproduced here-in-below in verbatim, for convenience:

**“Whereas, after examination of the information provided by the concerned organisation, the Committee found that in case of majority of the organisations the State Government provides financial support in the form of “Grants to PSUs or Share Capital or Other grants”. These organisations are utilizing 90% of those financial support towards meeting up the expenses on salaries and other retirement benefits of their employees and retirees. Some organisations**

are utilizing even upto 100% of the fund they receive from State Government. The committee also observed that most organisations were supposed to be profit-making but instead they have been incurring loss since long years. The accumulated loss of many organisations is huge and such loss have been increasing with each passing day. In such situation, most of the organisations have informed that they are not in a position to bear the burden of additional expenditure, consequent upon consideration of the claim of the petitioners, if any, unless the State Government provides them additional financial support for the purpose. The Committee also examined the details of financial resources of the State based on the State budget of 2020-21. The observation of Committee are as follows:-

- For the financial year 2020-21, the total budget of Rs. 19891.60 crores.
- During financial year 2020-21, the tentative earnings from State Own Revenue is Rs. 2743.00 crores.
- The total expenditure on State Head for payment of salary, pension etc., is Rs. 15120.29 crores. The deficit of the expenditure is to be met up from Central Government assistance.
- Out of the total expenditure on State Head, the expenditure on pension and other retirement benefits is Rs. 2740.44 crores which is about 18% of the total expenditure of State Head.
- The pension expenditure itself is almost equal to the State Own Revenue predicted during the financial year.
- The Budget deficit for the year 2020-21 is Rs. 511.41 crores.
- The Fiscal Deficit of the Budget for the year 2020-21 is Rs. 2149.07 Crores.

In such a situation, any further increase in the pension liabilities would further degrade the economy of the State. Hence it is neither possible to consider the claim of the petitioners nor to bear any additional liabilities on the pensionary matters.

And

Whereas, in addition to the above, the Committee also observed that pension of the retirees of the aforesaid organisations is dependent on pension scheme subscribed by the each of them during his/ her service tenure in the respective organisation. During the service tenure, an employee has to subscribe to Pension Fund as per the Scheme as in force in the organisation. Therefore, a pensioner is basically a subscriber of pension benefit. Upon his/her retirement, a retiree is entitled to quantum of pension based on the fund accumulated by him/her in the Subscriber account. Since the pension of the employees other than State Government organisation is primarily controlled by EPFO, therefore, the quantum of the pension cannot be altered by the State Government. It has to be at par with the rules/ guidelines as laid down by EPFO. Hence, the Committee observed that the State Govt. cannot be directed to provide additional fund for retrospective revision of pension under EPFO. So, there is no question of revising EPF pension at higher rates on retrospective basis.

And

Whereas, the Committee further observed that till June, 2018 the State Government followed the policy of "Defined benefit" mode of pension payment under erstwhile CCS (Pension) Rules 1972 as adopted in Tripura. Under that mode, there had been substantial increase in pension expenditure over last several financial years as compared to decline of revenue receipts. To cope up with this expenditure scenario, the State Government opted to introduce New Pension Scheme with effect from 1<sup>st</sup> July, 2018. The New Pension Scheme is based on "Defined Contribution" mode which is synonymous with pension system under the EPS. The Committee observed that it would neither be logical nor possible to revert back to the policy of "Defined Benefit" mode of pension for already retired employees of PSUs etc., alike the petitioners.

And

Whereas, the Committee also considered the legal concerns associated with the claim of the petitioners. In this regard, Supreme Court judgement dated 25.04.2003 in A.K. Bindal vs Union of India has been perused by the Committee. The Committee observed that the Hon'ble Apex



Court has observed that the legal status of a Govt. Company is not different from any other company registered under the Act. The fact that the majority of shares of a Govt. company are held by the State Govt. does not make any difference. As such employees of Government company are not employees of the State Govt. Being employees of the company it is the responsibility of the company to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the employees cannot claim any legal right to ask for a direction to the Govt. to meet the additional expenditure which may be incurred on account of revision of pay scales. The Committee observed that pension being a derivative of pay, it is not feasible to allow revised pension to the retirees of PSUs etc. retrospectively in violation of the guidelines laid down by EPFO.

The Committee also observed that in a similar matter relating to WP(C) 160/2019 filed by Sri Hiranmoy Bagchi, an employee retired from TRTC, the Hon'ble High Court has observed that-

*"... though the committee did suggest framing of the pension scheme for the employees of TRTC, it was clearly provided that the corporation is not in a position to weigh to burden of any such pension liability. In other words the surplus funds required for making such additional responsibility must come from the Government.*

*The Finance Department examined the scheme and made two pertinent observations. Firstly, it was pointed out that even in the existing condition nearly 90% of the funds of the corporation come from Government and only 10% is generated through its own revenue. Any further responsibility to pay pension would put burden on the Government exchequer which the Government is unwilling to carry. Second pertinent observation was that the Government of Tripura itself had replaced old pension scheme by new pension scheme envisaging contribution from the employer as well as employee.*

*It was therefore, not found feasible to introduce the pension scheme in the original format for the employees of the TRTC. Reasons cited by the Government for not been able to frame a pension scheme for the petitioners and other employees of TRTC cannot be faulted. In absence of some other valid reasons directions contrary to such informed consideration and decision making process cannot issued.*

Thus, the Committee does not consider the claim of the petitioners.

Now, therefore, in compliance to Order dated 13-09-2019 of the Ld. Division Bench of the Hon'ble High Court in WP(C) 1084/2019 followed by the representation submitted by the petitioners and basing on the Report of the 5-Member Committee as constituted by the State Government, the claim of the petitioner(s) in the writ petition vide No. WP(C) 1084/2019 cannot be agreed to."

**7.** I have perused the entire report of the committee. I have also heard learned counsel appearing for the petitioner and the learned counsel appearing on behalf of the corporation as well as the State-respondents.

**8.** Considering the submissions and the reliefs claimed by the petitioners, in the opinion of this court, two questions emerge for discussion and determination, (i) whether the court can direct the State government to provide

*necessary fund to the corporation; (ii) whether the court can determine the amount of pension an employee may be entitled.*

**9.** It reveals that all the corporations are government undertakings. The service conditions including pension scheme of the employees of these corporations are governed by their respective statutes. According to reports of the expert committee all the corporations are utilizing the funds provided by the State government even to the extent of 100%, and have been running in loss, though, these organizations are supposed to be profit making as observed by the expert committee.

**10.** In this situation, in my opinion, the employees of these statutory organizations cannot claim, as a matter of right, the pensionary benefits, as provided to few of the corporations who have been able to generate their own funds with one-time support from the state government. Furthermore, the employees of the present batch of writ petitions cannot be treated equally to the employees of those organizations whose pension schemes have been introduced under different schemes with the assistance of some other organizations like LIC, bank, etc., while the pension of the members of the petitioner's organization is determined on the basis of the pension scheme subscribed by each of them during his/her service tenure in the respective organization and are primarily controlled and regulated by EPFO. As such, the petitioners cannot complain of discrimination having regard to the equity clause enshrined under Article 14 of the Constitution of India.

**11.** Providing grants or other benefits to any of the organizations is a matter of policy decision of the government, and in the opinion of this court, the court cannot direct the State or its instrumentalities to formulate certain policy because it would have a scaring effect having huge financial implication. For this reason, it should be left to the expert body, which, in this case was duly constituted in compliance with a direction of this court, as stated above, and accordingly, the committee submitted its report after taking due hearing from the petitioners.

**12.** Needless to say, grant of pensionary benefit is not a one-time payment. Extension of such benefit is a recurring expenditure and liability would be continuous involving huge government exchequer. In this scenario, it is ultimately the state government and the corporation to take a policy decision as to whether such benefits should be provided to its employees or not. It is outside the court's jurisdiction to make a roving enquiry as regards the fund status of the respective corporation or to chose a scheme suitable to the employees of such corporation without the aid and advice of the expert body. It is settled proposition of law that the interference of the judiciary to such a policy matter having serious financial implication and/or having a cascading effect is not at all warranted and justified.

**13.** Added to it, the writ court while exercising the power of judicial review under Article 226 of the Constitution of India will not as a court of appeal sit over the well-reasoned report of the expert body following the well-neigh

principle of self-restraint in the matter of policy decisions of the government. As a logical corollary, both the questions set out here-in-above for decision have been answered in negative.

**14.** In the light of above discussion and the reasons thereof, this court is unable to accept the contentions raised and reliefs claimed by the petitioner, and accordingly, all these batch of writ petitions stand dismissed. However, there shall be no order as to costs. Pending application(s), if any, also stands disposed.

**JUDGE**

