

**HIGH COURT OF TRIPURA
AGARTALA**

W. P.(C) No.172 of 2008

Shri Matilal Debnath,
son of late Gouri Kamal Debnath,
resident of Type-III Quarter at Kanchanbari PHC,
PS – Kumarghat,
District - North Tripura

.....**Petitioner**

- Vs -

1. The State of Tripura,
represented by the Secretary,
Health Department,
Government of Tripura,
Agartala
2. The Director of Health Services,
Government of Tripura,
Agartala
3. The Chief Medical Officer, North,
Kailashahar, North Tripura District

.....**Respondents**

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner	:	Ms. R. Guha, Advocate
For the respondents	:	Mr. S. Chakraborty, Addl. GA
Date of hearing and delivery of Judgment and order	:	30.05.2014
Whether fit for reporting	:	NO

Judgment and Order (Oral)

Heard Ms. R. Guha, learned counsel appearing for the petitioner as well as Mr. S. Chakraborty, learned Addl. GA appearing for the respondents.

02. The grievance of the petitioner is that he was appointed as the Grade-III driver by the order dated 02.08.1989, Annexure-2 to the writ petition, but the benefit of the pay scale in terms of the Tripura State Civil Services (Revised Pay) (17th Amendment) Rules, 2007 entitled to the drivers in the Tripura Government Driver

Services was not extended to him illegally. Further that an order of recovery was made on 08.10.2007 as for sometime he was granted the pay scale attached to the driver in the said cadre service. The said order of recovery dated 08.10.2007, Annexure-8 to the writ petition, has been challenged in the writ petition. By the order dated 06.11.2007 whereby the petitioner was given the career advancement (CAS-2) in the pay scale of Rs.3300-7100/- as the petitioner had completed seven years of service satisfactorily without any promotion. According to the petitioner, he ought to have been given the scale of Rs.4000-7890/- on completion of seven years of service as provided by the said Amendment Rules, 2007.

03. The show cause as issued to the petitioner by the order dated 07.09.2007, Annexure-6 to the writ petition, asking for re-fixing his pay and allowances in the scale of pay of Rs.3300-7100/- (CAS-2) w.e.f. 01.09.1996 has also been urged to be quashed.

04. Ms. Guha, learned counsel for the petitioner has strenuously argued that from the order dated 02.08.1989 and 05.09.1990, Annexures-2 & 3 to the writ petition respectively, it would be apparent that the petitioner was appointed as the Grade-III driver. The Grade-III driver is only available in the Tripura Government Vehicles Drivers Services, as such his appointment has to be deemed as made in the said cadre service. Thus, the impugned orders are bound to fall through and the petitioner would garner much more pecuniary benefits as after completion of seven years of satisfactory service he has to be moved to the pay scale of

Rs.4000-7890/- meant for the Grade-II drivers in the said cadre service.

05. From the other side, Mr. Chakraborty, learned Addl. GA appearing for the respondents has strongly submitted that the petitioner was never appointed in the cadre service. He was appointed by the Director of the Health Services, who is not the appointing authority of the cadre service but the Commissioner of the Transport Department is the appointing authority in terms of the Tripura Government Vehicle Drivers Service Rules. He has further submitted that in the midst of the proceeding, Tripura State Civil Services (Revised Pay) Rules, 2009 has replaced the Tripura State Civil Services (Revised Pay) Rules, 1999 by paving for the provisions of 14(7) of the TSCS (Revised Pay) Rules, 2009 which reads as under:

"14(7) Same benefit to Ex-Cadre Drivers with Drivers in the Cadre Service. – The benefits of pay scales and grade movement admissible to the Cadre Service Drivers shall be extended to the ex-cadre Drivers by amendment of the concerned recruitment rules. The benefits under this sub-rule for eligible cases would be admissible notionally from the date of coming over to the revised pay structure under these rules with financial benefit from 1.1.2009."

06. Mr. Chakraborty, learned Addl. GA has further submitted that the petitioner has exercised the option for having the said benefit and thereafter his pay has been fixed in terms of the said provisions as engrafted in Rule 14 (7) of the TSCS (Revised Pay) Rules, 2009. As such, the petitioner now cannot claim any further relief. He has also referred to the order dated 14.07.2010, Annexure-R/2 to the counter affidavit showing how

the petitioner's pay and other benefits were fixed and he was granted the benefit of pay scale of Rs.4000-7890/- from the date of his completion of seven years of satisfactory service without promotion. However, no pecuniary benefit was allowed till 31.12.2009 and financial benefit had been released from 01.01.2010.

07. Having appreciated the submission of the learned counsel and the records so produced before this Court, it is apparent that the petitioner was not appointed as the driver in the Tripura Government Vehicle Driver Service as the petitioner's appointment was made not by the cadre controlling authority but by the Director of Health Services.

08. Be that as it may, by the Tripura State Civil Services (Revised Pay) Rules, 2009 all the Ex-cadre drivers have been granted the benefit of Tripura State Civil Services (Revised Pay) (17th Amendment) Rules, 2007, meaning thereby the initial pay of the ex-cadre driver would be Rs.3300-7100/- and on completion of the seven years of satisfactory service without promotion he would be moved to the pay scale of Rs. 4000-7890 meant for the Grade-II drivers of the Tripura Government Vehicle Driver Service. However, release of the pecuniary benefit has been circumvented by the said provisions of Section 14(7) of the Tripura State Civil Services (Revised Pay) Rules, 2009. From reading of the order dated 14.07.2010, Annexure-R/2 to the counter affidavit filed by the respondents, it has surfaced that even though the petitioner was entitled to the pecuniary benefit from 01.01.2009 but such

benefit was released only from 01.01.2010. There is no dispute that the petitioner is entitled to the scale of pay of Rs.3300-7100/- from the date when he has opted that scale in view of the Tripura State Civil Services (Revised Pay) Rules, 2009 read with Tripura State Civil Services (Revised Pay) (17th Amendment) Rules, 2009 and after completion of seven years of satisfactory service, he would be entitled to the pay scale of Rs.4000-7890/-. But in view of the provisions of Rule 14(7) of the TSCS (Revised Pay) Rules, 2009 his pay and allowances shall be fixed notionally till 31.12.2008 but from 01.01.2009 he would get the full pecuniary benefits.

09. The respondents are therefore commanded to refix the pay of the petitioner in terms of the above direction and release the arrears of pecuniary benefits within a period of three months from the date of furnishing the certified copy of this order to the Director of Health Services, Government of Tripura, if not already released. Apart that, since the pay scale equivalent to the driver in the cadre service has been extended to the Ex-cadre service drivers from inception of the TSCS (Revised Pay) Rules, 1999 the impugned order dated 08.10.2007, Annexure-8 to the writ petition shall stand quashed for two reasons, (1) the petitioner is now entitled to the pay scale of Rs.3300-7100/- from the date when the driver in the cadre service has been granted the said benefit or from the date of the option, whichever is later and therefore there cannot be any difference in the pay. However, in view of Rule 14(7) of the TSCS (Revised Pay) Rules, 2009 the petitioner was not entitled to any pecuniary benefits. (2) Considering the status of the

petitioner and the amount sought to be recovered, this Court is of the view that this order cannot be sustained and the respondents cannot be allowed to recover any amount from the petitioner. Hence, the impugned order dated 08.10.2007 for recovery is quashed.

Accordingly, this writ petition stands allowed to the extent as indicated above. However, there shall be no order as to costs.

JUDGE

MB