

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.75/2020

Smt. Bithika Tripura and Ors.

..... Petitioner(s).

Vs.

The State of Tripura and Ors.

..... Respondent(s).

WP(C) No.76/2020

Sri Bimal Chandra Das and Ors.

..... Petitioner(s).

Vs.

The State of Tripura and Ors.

..... Respondent(s).

For Petitioner(s) : Mr. Koomar Chakraborty, Advocate.

For Respondent(s) : Mr. Debalaya Bhattacharjee, Govt. Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

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31.01.2020

Learned counsel for the petitioners submitted that the petitioners were selected and recruited to the post of Graduate Teachers(GT) in the year 2010. Their appointments were also under cloud by virtue of the judgment of this Court in case of **Tanmoy Nath & Ors. Vs. State of Tripura & Ors., (2014) 2 TLR 731**. Subsequently, they have been selected and appointed to higher post of Post Graduate Teachers(GT). However, their salaries are fixed on fixed salary basis upon such fresh appointments. He submitted that the cases of all the petitioners would be covered by the judgment of this Court in case of **Smt. Sangita Reang and**

other Vs. State of Tripura, WP(C) No.295/2019 dated 29th January, 2020 and would fall in category II.

In the said judgment in case of **Smt. Sangita Reang**(*supra*) this Court had come to following conclusions :

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9. Category-II would be cases where a teacher, who was previously selected and appointed on a particular post which selection and appointment has been set aside by this Court in case of **Tanmoy Nath (supra)** is now selected and appointed through fresh selection process to a post higher than one which he previously held. Following writ petitions fall in this category:

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27. Coming to the cases falling in Category-II where the teachers have been selected and appointed on the higher posts, their cases must be considered in light of the observations made in para-125 of the judgment in case of **Tanmoy Nath (supra)**. The said paragraph is pivotal to the entire discussion. Nevertheless, certain developments have taken place after rendering of the said judgment and suitable modifications shall have to be made to suit the purpose. In other words this discussion must revolve around the directions contained in para 125 of the decision in case of **Tanmoy Nath (supra)** but cannot be confined to it completely. Right of the petitioners flow from the said judgment but the directions contained therein will have to be applied with suitable modifications as per the requirements of the case. Significant developments are that the proceedings remained pending before the Supreme Court and thereafter lingered before the Government. In the meantime, limited selections were made and appointments offered. The foundational purpose of issuing the clarification direction in para-125 of the judgment was to ensure that those teachers, who offer

themselves for fresh selection which would be undertaken on the basis of sound employment policy which may be framed and after competitive examination are selected and appointed, in their cases there must be a protection of past service already rendered. The Division Bench while striking down the entire selection process was of course actuated by certain irregularities committed in such selection process and in particular, offended by the fact that the selection policy was totally un-guided. However, that would not per say imply that every selected and appointed candidate was undeserving or incompetent. Therefore for such candidate who gets selected and appointed in the fresh selection process, the desire of the Court was to protect his past service for all purposes.

28. While doing so, the Court obviously would not be in a position to foresee all eventualities which may arise in future and provide for all possible combinations which may develop. Category-II is of cases where the teachers, who were previously holding particular post have proved their merit by securing selection on the higher posts. The philosophy and logic for protection past service contained in the judgment in case of **Tanmoy Nath (supra)** would therefore apply in their cases also, however, with a rider, namely, that their service for the purpose of seniority upon their fresh appointments cannot be protected. Any such direction would be wholly unjust to those teachers, who may be holding the post on regular basis long before these teachers were appointed on regular basis pursuant to fresh selection process. Surely, by no judicial dictum these teachers can jump in seniority over those who are already existing in the cadre since long. Subject to this restriction, the petitioners in Category-II must get the protection of their past service. This would also be in consonance with the clarification contained in para-125 of the judgment in case of **Tanmoy Nath (supra)**.

30. Under the circumstances, petitions are disposed of with following directions:

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(ii) In Category-II cases, past service rendered by the petitioners will be counted for the purpose of pension, pay fixation and all other purposes except for seniority. In other words, it is provided that the pay of these petitioners would be fixed in their respective posts pursuant to fresh appointments taking into account entire past service rendered by them and bearing in mind the principles contained in F.R.22 of the Fundamental Rules. However, their past service shall not count towards seniority. They would be placed at the bottom of seniority as on the date of their fresh appointments. It is clarified that these directions shall not enable any other teachers in the same cadre or any other cadre to claim up-gradation of his/her pay by seeking removal of anomaly or in any other manner."

The respondents shall examine the facts of each petitioner and shall regulate their pay fixations in terms of the said judgment in case of **Sangita Reang**(supra). For such purpose, the petitioners shall serve on the respondents a copy of this order along with copy of the petition and the judgment of this Court in case of **Smt. Sangita Reang**(supra).

The petition is disposed of accordingly.

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

(**AKIL KURESHI**), CJ