

**HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No.367 of 2020

Sri Bibhas Roy

...Petitioner (s)

V e r s u s

The Stat of Tripura & Ors.

...Respondent (s)

W.P.(C) No.369 of 2020

Sri Prabir Acharjee

...Petitioner (s)

V e r s u s

The Stat of Tripura & Ors.

...Respondent (s)

W.P.(C) No.371 of 2020

Sri Biswanath Chakraborty

...Petitioner (s)

V e r s u s

The Stat of Tripura & Ors.

...Respondent (s)

For Petitioner (s)	:	Mr. A. Bhowmik, Adv.
For Respondent (s)	:	Mr. D. Bhattachajee, G.A.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

30.06.2020

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharjee, learned G.A. appearing for the respondents.

All these writ petitions being W.P.(C) No.367 of 2020, W.P(C) No.369 of 2020 and W.P.(C) No.371 of 2020 are consolidated for disposal by a common judgment inasmuch as there is consensus in the Bar that all these cases are covered by the judgment and order dated 29.01.2020 delivered in

W.P.(C) No.295 and 2020 [Smt. Sangita Reang and others vs. State of Tripura and Ors.].

Mr. Bhowmik, learned counsel appearing for the petitioners has submitted that by the judgment dated 29.01.2020, this court had occasion to observe as under:

"14. With respect to Category-III, counsel submitted that in the said case also the Government cannot wipe out the entire past service of several years put in by the petitioners since they had subjected themselves to the fresh selection process during which they were found meritorious and therefore, appointed. The action of the Government therefore to place these petitioners on fixed salary basis was wholly impermissible. The directions contained in paragraph-125 of the judgment in case of Tanmoy Nath (*supra*) needs to be applied with suitable modifications. This Court while rendering the said judgment could not have foreseen in all eventualities. It would therefore be necessary to suitably interpret such directions and apply the same with necessary adaptations required to meet with the current situation."

It has been further observed in **Sangita Reang** (*supra*) as under:

22. We have noted the entire background of these cases from the initial point of the decision of this Court in case of Tanmoy Nath (*supra*). This Court while setting aside all the appointments including those of the petitioners, in the interest of school children provided that such teachers would continue to function on their posts till 31.12.2014. It is also provided in paragraph-123 that on or before 31.12.2014 the State must complete a fresh process of selection of teachers in all categories after framing a new employment policy. The State Government had challenged the said decision before the Supreme Court and by an order dated 04.08.2014 directions contained in paragraph-123 of the judgment were stayed. The directions for undertaking fresh selection process was thus, suspended. Consequently, all the teachers" including the present petitioners" services were continued in the same manner as before. It was only on 29.03.2017 that the Supreme Court while dismissing the appeal of the Government issued certain directions modifying those given by the High Court in paragraph-123 of the judgment. Time for framing fresh employment policy and for completion of selection process was extended. As per fresh guidelines therefore, such selection would be completed on or before 31.12.2017. It was also provided that "till the fresh process is completed, the teachers already appointed shall continue". In a subsequent order dated 14.12.2017 while extending the time for completing the selection process till 30th of June, 2018, it was further provided that "on 31st December, 2017, the tenure of the incumbents will come to an end. Thereafter, their appointment will only for six months on ad-hoc basis on such fresh terms as the State Government may impose.

Thereafter, none of the said incumbents will continue." There were further extensions and last extension, as noted for completing the selection process is granted up to 31.03.2020.

23. This cut off line drawn by the Government of appointment prior to 31.12.2017 for the purpose of protection of past service is wholly impermissible. Firstly, the directions contained in paragraph-125 of the judgment in case of Tanmoy Nath (supra) would continue to hold the field with suitable modifications of time lines provided by the Supreme Court in subsequent orders. Secondly, the purport of the Supreme Court directing that post 31.12.2017 the engagement of the teachers would be on ad-hoc basis was to put a greater sense of urgency on the State administration to complete the selection process within the time permitted. If the State Government itself faltered and failed to complete such process, surely the petitioners and other teachers similarly situated, cannot be penalized by wiping out their entire past service. The fact that the petitioners continued in service right from inception in the year 2010 till the regular selection and appointments in the year 2017/2018 is not in dispute. There is nothing on the record which would permit the Government to withhold the benefits of the directions contained in para-125 of the judgment in case of Tanmoy Nath (supra) if otherwise available, solely on the basis that some of these teachers were appointed after 31.12.2017. The first preliminary objection of the Government therefore must be rejected.

24. The second objection of the resignation by the respective teachers is possible of a summary dispatch. Firstly, all the petitioners had applied as per the requirement of the decision in case of Tanmoy Nath (supra) with age relaxation and with prior permission of the employer. Secondly, the resignations were tendered by the teachers upon being offered a fresh appointment pursuant to their regular selection. All these resignations were technical resignations. In plain terms without such resignations being tendered and accepted the petitioners could not have accepted the offer of fresh appointments. This Court in case of Tanmoy Nath (supra) never made any such distinction that a teacher who resigns from service to join fresh appointment on regular basis will not be entitled to the protection of the past service. Any such view would defeat the very purpose of issuing directions contained in paragraph 125 of the judgment. In any case, it is difficult to understand this objection of the Government. If not by tendering technical resignation, in which other mode the concerned employees could have brought about the termination of the relationship of employer employee to enable them to accept fresh offer of appointment is not explained anywhere. This is not a simple case of a Government servant resigning from his post out of his free will and thereby permanently terminating the employer employee relationship pursuant to which as per the relevant Rules and settled legal position, his past service would be forfeited. Does the Government Advocate suggest that in order to preserve past service the concerned teachers had to join new service without resigning from past engagement? Surely not. Interestingly, as pointed out by the counsel for the petitioners in W.P. (C) No.1215 of 2019 while considering the representations of the petitioners, Government itself has granted limited benefit of protecting the past service for the purpose of leave credit, provident fund, pension and gratuity. If the principle of forfeiting the past service upon resignation is accepted, even these benefits particularly, counting the service for the pensionary benefits could not have been granted.

Finally, the direction was issued on the respondents that the teachers who were previously holding a post but are now selected and appointed on

the lower post, they cannot claim seniority or any other benefit of the past service except for the limited purpose of leave to their credit, provident fund, pension and gratuity which the Government has already recognized and granted as also for being posted in the regular scale. Since the petitioners had rendered more than 5 years of service from 2010 and they were brought on the regular pay scale in the year 2015 and thereabout. It has been further directed that they cannot be placed back on the fixed salary basis. Firstly, this would go against the philosophy of counting past service of those teachers, who eventually get regular selection and appointment. Secondly, it would also be incongruent with the decision of the Government to count their past service for the purpose of pension and gratuity. If their past service is counted towards pensionary benefits, it would defy logic that the same should not be counted as a qualifying service for the purpose of being brought over to regular pay scale. Thus, it has been directed that the petitioners' past service would be counted for the limited purpose of retaining their leave credit, provident fund, pension and gratuity and further that they will be placed in the regular scale of pay from the date of their fresh appointment and the pay will be fixed at the minimum of the pay scale. They would receive all admissible allowances.

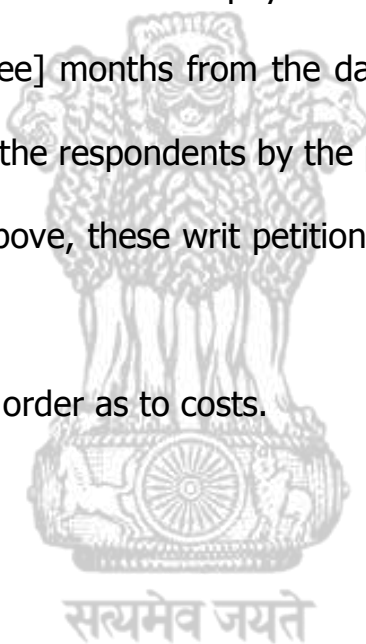
Mr. Bhattacharjee, learned GA has placed an instruction in writing wherefrom it transpires that the Government has taken initiative to give the

benefits to all the teachers who have not approached this court in terms of the judgment dated 29.01.2020 or otherwise for similar reliefs. Mr. Bhattacharjee, learned G.A. has fairly acceded to the claim of the petitioners.

In view of the above development, this court does not find any difficulty to pass the similar direction in these cases. Accordingly, the respondents are directed to count the petitioners' past service for the limited purpose of retaining their leave credit, provident fund, pension and gratuity and further, they will be placed in the regular scale of pay from the date of their fresh appointment and their pay will be fixed at the minimum of the pay scale. The respondents would make payment of all admissible allowances within a period of 3[three] months from the date when a copy of this order would be placed before the respondents by the petitioners.

In terms of the above, these writ petitions stand allowed and disposed of.

There shall be no order as to costs.



JUDGE