

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**W.P.(C)No.990 of 2018**

**Sri Manik Sarkar,**  
(widower of late Ali Bhowmik),  
son of late Manoranjan Sarkar,  
resident of Malancha Nivas, Govt. Qtr. II/2,  
Block-VI, PS: East Agartala, P.O. Kunjaban,  
District: West Tripura, PIN: 799 006

..... Petitioner

**- Vs -**

- 1. The State of Tripura,**  
to be represented by the Secretary of Education  
(Youth Affairs & Sports) Department,  
Government of Tripura, Civil Secretariat,  
New Capital Complex, Lichu Bagan,  
PS: NCC, West Tripura, PIN: 799 010
- 2. The Director of Youth Affairs & Sports,**  
Government of Tripura,  
'Shiksha Bhavan', P.O. Agartala,  
District: West Tripura, PIN: 799 001
- 3. The Deputy Director,**  
West District, Youth Affairs & Sports,  
DDSSC, Badharghat, West Tripura,  
P.O. A. D. Nagar, West Tripura, PIN: 799 003
- 4. The Director of Small Savings,**  
Group Insurance & Institutional Finance,  
Government of Tripura, Old Secretariat Complex,  
Agartala, West Tripura, PIN: 799 001

..... Respondents

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

For the petitioner	:	Mr. S. Deb, Senior Advocate Mr. P. K. Pal, Advocate
For the respondents	:	Mr. D. Sharma, Addl. G.A.
Date of hearing	:	24.01.2019

Date of judgment  
& order : **29.05.2020**  
Whether fit for reporting : No

### **Judgment and Order**

By means of this writ petition, the petitioner has challenged the decision contained in the communication dated 23.10.2017 [Annexure-8 to the writ petition] and the communication dated 24.02.2017 [Annexure-9 to the writ petition]. It has been further urged that the respondents be directed to release the benefits from the Tripura State Government Employees Group Insurance Scheme for premature death of the petitioner's wife namely Ali Bhowmik.

**02.** Having due regard to the judgment of the Gauhati High Court dated 04.05.1989 delivered in Civil Rule No.59 of 1989 [**Sri Satya Ranjan Paul vs. State of Tripura and two Ors.**] read with the order dated 11.06.1992 delivered in Civil Misc. Petition 457 of 1989 emerging from **Satya Ranjan Paul** (supra), the petitioner had made a request to the Director of Youth Affairs & Sports for releasing a sum of Rs.1,50,000/- as the group insurance proceeds on account of premature death of his wife namely Ali Bhowmik, who had been a Junior Physical Instructor.

**03.** In response to his letter by the said communication dated 23.10.2017 the petitioner was communicated that no benefit under Tripura State Government Employees Group Insurance Scheme, 1983 can be released as the said scheme does not and cannot apply to a person recruited under the state government after attaining the age of 50(fifty) years. It has been further mentioned in the said communication dated 23.10.2017 that deduction for that scheme had started from January 2013 when the petitioner's wife had completed fifty years of age and hence, on her account no benefit can be released. Prior to that, by the communication dated 24.02.2007 the Development Officer, Small Savings, Group Insurance and Institutional Finance had communicated to the head of office Youth Affairs and Sports, West District YAS office that in terms of what has been provided in para-3.1 of the Tripura State Government Employees Group Insurance Scheme, 1983 the scheme will not apply to a person recruited under the State Government after attaining the age of fifty years. That apart, petitioner's wife (since deceased) was inducted as a member of the said scheme with effect from 01.03.2013 in contravention to the provision of Tripura State Government Employees Group Insurance Scheme 1983 on her

attaining the age of fifty years. Therefore, any benefit from the said scheme has been regretted.

**04.** By dint of the memorandum dated 03.05.1991 [Annexure-2 to the writ petition] the petitioner has contended that pursuant to the memorandum dated 30.05.1990 [the offer of appointment] his wife was appointed to the post of Junior Physical Instructor in the scale of pay of Rs.970-2400/-. From the said memorandum dated 03.05.1991 it is apparent that the petitioner had joined the service in the post of the Junior Physical Instructor with effect from 16.01.1991. Her date of birth as per the service record is 19.01.1961. Hence, on the date of her appointment, age of the petitioner's wife was more than fifty years is totally baseless, unfounded and unsustainable. Moreover, the said group insurance scheme is mandatorily applicable to her service as per clause-1.1 of the scheme which provides as under:

**"1.1 The scheme will be compulsory for all those 'employees' who enter State Government Service after the scheme is notified i.e. all those employees entering State Government Service after the date of notification of the scheme will be compulsorily covered under the 'scheme' from the date it comes into force."**

Accordingly, the petitioner had raised the claim for the group-insurance return to the extent of Rs.1,50,000/- under the Tripura State Government Employees Group Insurance Scheme,

1983. But his claim has been refused by the said communication [Annexure-9 to the writ petition].

**05.** The petitioner has asserted that the employer was duty bound to deduct the group insurance subscription from the salary bill of the petitioner's wife, meaning, from the first salary bill onwards. The employee concerned cannot be made liable for deduction of such subscription as per rule. It has been admitted by the petitioner, such deduction for the of the subscription started when the petitioner attained the age of fifty years and that day of first deduction has been taken as the relevant date for induction of the petitioner's wife in the said group insurance scheme. In this regard, the said decision of the Gauhati High Court has observed as follows:

**"Upon hearing the learned Govt. Advocate and the Ld. Counsel for the petitioner of Civil Rule No.59/89 and taking into consideration to the fact and circumstances of the case, we do not consider it expedient to review order dated 04-05-89 passed by this Court. Order dated 04-05-89 passed by this Court. The amount allowable under the Group Insurance Scheme to which the petition of Civil Rule No.59/89 is entitled to should be paid to him within a period of 2 (two) months from today after adjusting the contribution of the deceased employee, which ought to have been deducted from his salary after the scheme came into force."**

**06.** It has been averred in para-10 of the writ petition that the similar adjustment can be made from the proceeds on account of death of the petitioner's wife. The respondents however did not accede to the said proposition and by filing the reply on 10.01.2019 has admitted that petitioner's wife entered in the government service on 16.01.1991 in the scale of pay of Rs.970-2400/-. In the harness, she died prematurely on 02.08.2016 when she was in the scale of pay of Rs.5310-24000/- with the grade pay of Rs.2100/-. Deduction of the subscription from the salary bill commenced from 01.03.2019, wholly in contravention of the provision of Tripura State Government Employees Group Insurance Scheme, 1983, when the petitioner's wife had attained more than fifty years of age. According to the respondents, the appointment of the petitioner was purely temporary. However, they have admitted that the petitioner's wife confirmed in the service against the post created by the memorandum dated 27.12.2012 [Annexure-R/8 to the reply filed by the respondents]. According to the respondents, earlier, the petitioner's wife was not in the regular establishment. For purpose of reference, the entire text of the memorandum dated 27.12.2012 is extracted hereunder:

**"Government of Tripura  
Directorate of Youth Affairs & Sports  
Agartala, Tripura**

**NO.F.1(3-20)-DYAS/Estt/95(L-2)10867-11187**

**Dated, Agartala, the, 27/12/2012**

**MEMORANDUM**

**Subject: Regularization & continuation of services of the Jr. Physical Instructors & Physical Instructors who were appointed against the discontinued temporary posts during the year 1989 to 1993.**

**WHEREAS, 220 (two hundred and twenty) nos. of Jr. Physical Instructors and 59 (fifty nine) nos. of Physical Instructors were appointed during the year 1989 to 1993, against the temporary posts of Jr. Physical Instructors and Physical Instructors;**

**AND WHEREAS, subsequently it was found that the temporary posts, against which they were appointed, were discontinued due to non obtaining of continuation of the said temporary posts and as a result, the said Jr. Physical Instructors & Physical Instructors could not be regularized in service due to non availability of posts;**

**AND WHEREAS, the Council of Ministers, in the Meeting held on 13<sup>th</sup> June, 2005, communicated vide No.F.1(47)-GA(CAB)/2000 dated 14.06.2005, had approved for creation of total 279(two hundred and seventy nine) nos. of posts of Jr. Physical Instructors & Physical Instructors, with prospective effect, subject to the conditions of Recruitment Rules being fulfilled and posts for SC/ST as per roster requirement may be created but their filling up may be kept in abeyance, with a view to regularize those Jr. Physical Instructors & Physical Instructors in service;**

**AND WHEREAS, pursuant to the approval by the Council of Ministers 220 nos. of posts of 'Jr. Physical Instructors' & 59 nos. of posts of 'Physical Instructors' have been created vide Memo. No.F.1(3-20)-DYAS/Estt/95(L-2)/123570-581 dated 07.02.2009, for the purpose aforesaid;**

**NOW THEREFORE, the said Jr. Physical Instructors & Physical Instructors who were appointed during the period from 1989 to 1993, are hereby regularized in service, with effect from...../the date as appears against each of them in the attached list, by way of absorption in the posts so created and are allowed to continue their services in the**

**existing scale of pay and as per the terms and conditions laid down in their Offer of appointment.**

**The expenditure involved for this purpose will be debited against the detailed Head of Accounts:2204-00-101-41-10-01 Salaries under demand No-42 (Non Plan)**

**Sd/- illegible  
(Sahadeb Das, IAS)  
Director  
Youth Affairs & Sports  
Tripura"**

**07.** It is apparent that petitioner's wife along with others were appointed in the temporary post of Junior Physical Instructor and Physical Instructor. For non-obtaining due sanction for continuation of temporary post, the Junior Physical Instructor and Physical Instructor who were appointed between 1989-1983 could not be regularized in service. Thus, against the newly created post of 279 Junior Physical Instructors and Physical Instructors, the petitioner's wife was regularized, but in the memorandum dated 27.12.2012 the regularization has been shown with prospective effect. But the actual date of effect has been shown in the annexed list. In the said list the petitioner has been shown to have been appointed with effect from 16.01.1991. It is to be mentioned here that the petitioner's wife got the salaries from the date of the appointment in the regular scale. For example, the petitioner's wife got the salaries and other allowances with effect from 16.01.1991 uninterruptedly. The deduction that has been made



from the salary of the petitioner as subscription of the said scheme was never refunded to the petitioner.

**08.** On the contrary, the arrears of subscription for the group insurance scheme was deducted from the salary of the petitioner. In rejoinder the petitioner has stated that the said contention that the service of the petitioner's wife was regularized by the memorandum dated 27.12.2012 [Annexure-R/8 to the reply filed by the respondents] is grossly unacceptable inasmuch as from the memorandum dated 02.02.2009 [Annexure-10 to the rejoinder filed by the petitioner] it would be apparent that the petitioner was given the next higher scale of pay i.e. Rs.4200-8650/- on completion of 7(seven) years of service in the entry scale of the post without any promotion under Rule 10 of Tripura State Civil Service (Revised pay) Rules, 1999 with effect from 16.01.2008. The petitioner has also asserted that from the memorandum dated 03.05.1991 [Annexure-2 to the writ petition] it would clearly evident that the persons below the serial No.1-68 were entertained against the post of Junior Physical Instructor which fell vacant due to promotion to the higher post of Physical Instructor (Grade-I) vide the Directorate's Memorandum No.F.1(1-9)-DSE/87 dated 14.10.1987 and 21.11.1987. The petitioner has

confidently asserted that she was entertained against the said 68 post fallen vacant on 14.10.1997 and 21.11.1987 due to promotion to the higher post of Physical Instructor (Grade-I). Those 68 posts were regular vacant posts in the scale of Rs.970-2400/-. Thus the memorandum dated 27.12.2012 [Annexure-R/8 to the reply] cannot impede any benefit from the account of the petitioner's wife.

**09.** Mr. S. Deb, learned senior counsel assisted by Mr. P.K. Pal, learned counsel having appeared for the petitioner has submitted that non-deduction of the subscription from the first salary bills onwards is the lapse on the part of the employer and for the lapse of the employer the petitioner's benefit cannot suffer any jeopardy. The petitioner has also filed representation for sanction of payment on the said insurance what does the scheme provide for collection of subscription? In sub-clause 1.5 under clause 8.5, it has been clearly stated that the Drawing and Disbursing Officer [DDO] shall deduct/recover the subscription from the 'employees' irrespective of their being on duty, leave or suspension. It has been further provided that no interest shall be levied on arrears of subscriptions, if the non-recovery is due to delayed payments of salary and wage.

**10.** But Mr. D. Sharma, learned Addl. G.A. appearing for the respondents following the reply filed by the respondents has stated that the petitioner's wife was ineligible to be inducted as the member of the group insurance scheme, inasmuch as she was recruited after she attained the age of fifty years. True it is that, in sub-clause 1.1 under clause-2 in the Tripura State Government Employees Group Insurance Scheme, 1983 which was circulated as the annexure of the office memorandum dated 30.11.1983 with stipulation that the said scheme will come in to effect from 01.03.1984. In the said clause 1.1, it has been provided as under:

**"1.1 The 'scheme' shall apply to all State Government servants. Contract employees, persons on deputation from the Central Government and other State Governments, public sector undertakings, or other autonomous organizations, person appointed on contract, casual labourers, persons paid at daily rates, persons not in whole time employment, persons in seasonal employment, persons appointed in short term vacancies and ad-hoc employees will not be covered by the 'scheme'. The 'scheme' will also not apply to persons recruited under the State Government after attaining the age of 50 years."**

**11.** Having appreciated the submission made by the counsel for the parties, this court is unable to accept the plea of the respondents inasmuch as the said scheme has been made compulsory for all employees who entered state government service [see Para 1.1 as produced] after the scheme is notified. Hence, all these employees entered in the state government

service after the notification, is compulsorily covered under the scheme from the date it comes into force. Therefore, when the petitioner's wife was recruited as the Junior Physical Instructor, she be deemed to be covered by the said scheme. Moreover, the restriction that has been imposed is not in respect of the person who has been inducted as the member of the said scheme after fifty years, but the restriction is that the person who recruited under the state government 'after attaining the age of fifty years' will not be covered by the scheme.

**12.** There cannot be any amount of doubt that the petitioner was appointed on 16.01.1991 as is evident from the memorandum dated 03.05.1991 [Annexure-2 to the writ petition] where petitioner's name appears at serial No.13 of the memorandum dated 03.05.1991 [Annexure-2 to the writ petition]. In the said memorandum dated 03.05.1991 it has been clearly stipulated that the persons under serial No.1-68 are entertained against the post of Junior Physical Instructor fallen vacant due to the promotion of the higher post to the Physical Instructor (Grade-I) vide the Directorate memo No.F.1(1-9)-DSE/87 dated 14.10.1987 and 21.11.1987. Notwithstanding that it is an admitted fact that subscription for the scheme was deducted from

the salary of the petitioner's wife only w.e.f. 01.01.2013 as it would be evident from memorandum No.F.1(3-20)-DYAS/Estt/95(L-2)10867-11187 dated 27.12.2012.

**13.** There cannot be any dispute that till 01.01.2013, no subscription or the enhanced subscription for the said scheme was deducted from the petitioner's wife though she has been shown to have appointed from 16.01.1991. Thus, the respondents are directed to quantify the total amount of subscription from 16.01.1991 to 31.12.2012 without any interest and adjust the said amount from the group-insurance money which the petitioner's wife is otherwise entitled to receive. The remainder of the amount after such adjustment shall be paid to the petitioner and other legal heirs of Ali Bhowmik since deceased, within a period of three months from the date when the respondents shall receive a copy of this order from the petitioner.

Hence, the writ petition stands allowed to the extent as indicated above.

There shall be no order as to costs.

**JUDGE**