

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

WA No.229/2019

Sri Promode Ch. Saha and Ors.

..... Appellant(s).

Vs.

The State of Tripura and Ors.

..... Respondent(s).

For Appellant(s) : Mr. C S Sinha, Advocate,  
Ms. Swarupa Chisim, Advocate.

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

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**  
**HON'BLE JUSTICE MR. S G CHATTOPADHYAY**

**\_O\_R\_D\_E\_R\_**

**22/12/2020**

(Akil Kureshi, CJ).

This appeal is filed by the original petitioners to challenge to limited extent the judgment of the learned Single Judge in WP(C) No.309/2011. All the petitioners were recruited as Assistant Teachers in Government primary schools. They have acquired the higher qualification of graduation. Their case is that as per the pay rules and Government policy, they should have been assigned the higher scale for Graduate Teachers from the date of declaration of their result in the examination i.e. the date when they acquired such higher qualification. The petitioners relied heavily on a full Bench judgment of the High Court of Gauhati in

case of *Sabyasachi Bhattacharji Vs. The State of Tripura* reported in **1997(1) GLT 354**. They point out that in the said judgment the Full Bench had recognised the rights of Assistant Teachers serving in primary schools also to claim higher pay scale upon acquisition of the qualification of graduation. They further point out that the Government of Tripura by office memorandum dated 7<sup>th</sup> December, 1992 while formalising the benefit of higher pay scales to Graduate Assistant Teachers, illegally introduced a cut off date of 1<sup>st</sup> January, 1988 for applicability of the said higher pay scales. The relevant portion of the said notification, with the offending portion highlighted herein, reads as under :

*“(F) FOR THE SCHOOL TEACHERS AND SIMILAR OTHER EMPLOYEES (SUCH AS, PHYSICAL INSTRUCTOR, LIBRARIAN, COACH, CLASSICAL TEACHER, HINDI TEACHER, VERNACULAR TEACHER, DRAWING TEACHER, CRAFT INSTRUCTOR/TEACHER ETC. WHO ACQUIRED HIGHER ACADEMIC QUALIFICATION IN THEIR RESPECTIVE TRADE/SUBJECT TO WHICH THEY ARE ATTACHED, ON OR AFTER 24.4.1982.*

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*(i) They shall be granted higher pay scales according to their qualification w.e.f. 1.1.1988 or the date of publication of result, whichever is later; .....”*

In the petition these petitioner had, therefore, challenged the validity of this notification.

[2] Before the learned Single Judge, the Government had opposed the petition, on merits as well as delay and laches. The learned Single Judge by the judgment under challenge held that though the petition was filed after long delay, since it pertained to the correct fixation of pay which was a recurring cause, the same cannot be dismissed only on that ground. Instead the benefits to be given to the petitioners should be restricted. In paragraph 4 of the judgment, after referring to the decision of Full Bench in case of **Sabyasachi Bhattacharji**(supra), the learned Single Judge observed as under :

*“[4] Having regard to the provisions of Para-7 of the office memorandum dated 07.12.1992 read with the decision of Gauhati High Court in Sabyasachi Bhattacharji (supra), this court is of the view that the petitioners were entitled to the higher pay scale, meaning the pay scale of Rs.325-625/- not from the date when they acquired the higher qualification but from 01.01.1988 and such benefit shall be notionally carried forward till 31.12.1991 and the actual financial benefit will be entitled to them from 01.01.1992.”*

[3] Eventually the petition was disposed of with following declaration and direction:

*“[7] Having regard to this, this court is of the view that this writ petition cannot be held to be hit by the doctrine of laches. However, the principle as laid down in Yogendra Shrivastava (supra), the financial benefit of the petitioners shall be available from a day exactly 3(three) years prior to filing of the writ*

*petition. For purpose of record it is observed that the writ petition was filed on 25.07.2011. The respondents are, therefore, directed to fix the pay of the petitioners in the said scale of Rs.325-625/- from 01.01.1988 or any date when they have acquired their higher qualification, if the qualification is acquired within 31.12.1991 as per the Para-F of the office memorandum dated 07.12.1992. Thereafter, the pay shall be fixed till 25.07.2008 notionally and the petitioners shall be entitled to financial benefits from 26.07.2008. Needless to mention that after fixing the pay of the petitioners on 01.01.1988 or the date when they have acquired their qualification within 31.12.1991, their pay shall be fixed in terms of the revision of scales as subsequently carried out and accordingly, their financial benefit shall be released w.e.f. 26.07.2008.*

*Mr. Sinha, learned counsel appearing for the petitioners has pointed out that some of the petitioners have retired by now. It is also clarified that the last pay of the petitioners who have retired from the service shall be re-fixed for purpose of revision of the pension and other retiral benefits, if any, in terms of this order.”*

[4] The short grievance of the appellants-original petitioners is that paragraph 4 of the judgment would give an impression that the learned Single Judge has restricted effect of the benefit of higher pay scale to 1<sup>st</sup> January, 1988 even in case of those teachers who might have acquired the qualification of graduation earlier to the said date. It was argued that there is some conflict between the conclusions of the learned Judge in Paragraph 4 and paragraph 7 of the judgment. In paragraph 7 of the judgment, the learned Single Judge held that the benefit of higher pay

scale would be available to a teacher from 1<sup>st</sup> January, 1988 or any date when such higher qualification is acquired, as long as the same is acquired before 31<sup>st</sup> December, 1991. This would be as per the memorandum dated 7<sup>th</sup> December, 1992.

[5] Learned Government Advocate, Mr. Debalaya Bhattacharjee, opposed the appeal submitting that all the petitioners have been granted the benefit as per the decision of the learned Single Judge. There is no further scope for expanding the same.

[6] Before the Full Bench of Gauhati High Court in case of *Sabyasachi Bhattacharji(supra)*, the question of availability of higher scale to an Assistant Teacher who acquires qualification of graduate, but is appointed in a primary school came up for consideration. The concerned teachers had filed a civil suit for such benefit which was dismissed. Their first appeal was also dismissed. In the second appeal, the Single Judge of the Gauhati High Court held that there was no distinction in the category of Teacher for grant of higher pay scale prescribed for those holding the higher qualification of graduation. The stand of the Government that such higher pay scale is available only for Assistant Teachers engaged in secondary and higher secondary schools was not accepted. This view was approved by the Full Bench. That being the position, all the petitioners by virtue of the said Full Bench judgment

were entitled to the benefit of higher pay scale upon acquisition of the higher qualification, that is, from the date of publication of the result of the relevant examination. However, during the pendency of the reference to the Full Bench, the Government issued the said notification dated 7<sup>th</sup> December, 1992 and purportedly restricted effect of the benefit of higher pay scale to Assistant Teachers possessing qualification of graduation to 1<sup>st</sup> January, 1988. This, in our opinion, would amount to taking away an existing right. Going by the judgment of the High Court in second appeal as confirmed by the Full Bench in case of *Sabyasachi Bhattacharji(supra)*, all the petitioners were entitled to the benefit of higher scale from the date of publication of the result. Such benefit could not have been pushed back to 1<sup>st</sup> January, 1988.

[7] There is a seeming conflict between the observations made by the learned Single Judge in paragraph 4 and paragraph 7 of the judgment. However, minute scrutiny of both the paragraphs would convince us that in paragraph 4, the learned single Judge was referring to those teachers who may have obtained the graduation qualification prior to 1<sup>st</sup> January, 1988. In their cases, as per this paragraph, higher pay scale would be available from 1<sup>st</sup> January, 1988 only in terms of the Government memorandum dated 7<sup>th</sup> December, 1992. In paragraph 7, on the other hand, the learned Judge was referring to those teachers who may have

obtained the higher qualification of graduation after 1<sup>st</sup> January, 1988 but before 31<sup>st</sup> December, 1991, in whose cases, perfectly justifiably, the office memorandum dated 7<sup>th</sup> December, 1998 would apply. Combined reading of these two paragraphs, however, would show that the petitioners' the prime grievance of the office memorandum dated 7<sup>th</sup> December, 1992 restricting their entitlement of higher pay scale till 1<sup>st</sup> January, 1988 was not answered.

[8] In the result, by disposing of this appeal it is held that all the petitioners who may have acquired the higher qualification of graduation prior to 1<sup>st</sup> January 1988, would be entitled to the benefit of higher pay scale prevailing at the relevant time from the date of publication of their result. However, any benefit flowing from his declaration would only be worked out for notional purposes till the date of filing of the petition. Actual benefit would be available only from the date of the petition and not for any earlier period. This so because the petitioners approached the Court in the year 2011 for a grievance which had arisen in the year 1992.

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

( S G CHATTOPADHYAY, J )

( AKIL KURESHI, CJ )