

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) No. 442 of 2020**

**Sri Dwijen Debnath**, Senior Helper  
son of late Manmohan Debnath, resident of East Shibnagar, Kalitala,  
P.O. Agartala College, P.S. East Agartala, District- West Tripura

.....**Petitioner**

**-VERSUS-**

- 1. The State of Tripura**,  
represented by the Principal Secretary, Public Works Department, Government Civil Secretariat, P.S. New Capital Complex, P.O. Kunjaban, District- West Tripura.
- 2. The Chief Engineer**,  
Public Works Department (R&B), Government of Tripura, Pandit Nehru Complex, Gurkhabasti, P.O. Kunjaban, P.S. New Capital Complex, District- West Tripura.
- 3. The Principal Secretary**,  
Finance Department, Government of Tripura, Civil Secretariat, P.O. Kunjaban, P.S. New Capital Complex, District- West Tripura.
- 4. The Under Secretary**,  
Finance Department, Government of Tripura, Civil Secretariat, P.O. Kunjaban, P.S. New Capital Complex, District- West Tripura.
- 3. The Executive Engineer**,  
Internal Electrification Division, Netaji Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura.

....**Respondents**

|                                                |   |                          |
|------------------------------------------------|---|--------------------------|
| For the Petitioner (s)                         | : | Mr. A. Bhowmik, Advocate |
| For Respondent (s)                             | : | Mr. D. Sarma, Addl. GA   |
| Date of hearing & delivery of judgment & order | : | <b>30.11.2021</b>        |
| Whether fit for reporting                      | : | <b>Yes</b>               |

**HON'BLE MR. JUSTICE ARINDAM LODH  
JUDGMENT & ORDER (ORAL)**

By means of filing the present writ petition, the petitioner has challenged the memorandum dated 08.06.2020 under reference No. F.6(122)-PWD(E-II)/2018/2579-619 issued by the Chief Engineer, PWD (R&B), Agartala, Tripura, whereby and whereunder the benefits of CAS-II (pay scale of Rs. 3050-5910) and ACP-3 ((Rs. 5310-24000 with Grade Pay of Rs.1800/-

as per TSCS (RP) Rules, 2009) which were granted to the petitioner on completion of prescribed period of service were cancelled. According to the petitioner, the cancellation of the benefits provided to the petitioner has been passed in violation of the provisions of ROP Rules, 1988 as well as ROP Rules, 1999.

2. Briefly stated, the petitioner was appointed as 'Khalasi' under Public Works Department, Government of Tripura on 28.09.1987 in the pay-scale of Rs. 370-650/- prior to introduction of Tripura State Civil Services (Revised Pay) Rules, 1988 (for short ROP Rules, 1988). Upon introduction of said ROP Rules, 1988, the post of 'Khalasi' was re-designated as 'Senior Helper' and the pay scale was fixed at Rs. 850-2130/-. Some clarification was sought for by Public Works Department (for short, PWD) to the Finance Department, Government of Tripura regarding fixation of pay-scale of the employees holding the post of 'Khalasi' due to re-designation of the said post as "Senior Helper". In response to such query, Finance Department, Government of Tripura by communication dated 30.11.1988 had clarified the position in the manner as under:

**"Subject: Clarification in respect of fixation of pay of Khalasi, Gauge Khalasi and Drivers belonging to Tripura Govt. Vehicle Drivers Service.**

**Sir,**

Reference directly from some Executive Engineers under administrative control are being received asking for clarification in respect of fixation of pay of employees holding the posts mentioned above. The points are clarified below:

**(a) Khalasi/Gauge Khalasi:**

**(Sl. 30 on page 108 of the ROP Rules, 1988)**

**These posts are in the existing scale of Rs. 370-650 and are redesignated as 'Senior Helper'. A question has been raised whether in these cases the pay shall**

be notionally fixed in the modified present scale of Rs. 400-775 and in the revised scale of Rs. 850-2130.

In this connection a reference is invited to Note-3 under Part-C of Schedule III of the rules laid. In such cases the fixation is to be made according to the redesignation of the posts. Since these posts are redesignated as Senior Helper the pay shall first be notionally fixed in the modified scale of Rs. 400-775 and then to the revised scale of Rs. 850-2130.

(b) xxx xxx”.

3. Upon such clarification, the respondents had initially fixed the scale of pay of the petitioner at Rs. 400-775/-, which was the modified scale of pay of Rs.370-650/-, and then, allowed him the revised scale of Rs. 850-2130/-. Thereafter, the Government of Tripura had introduced the Tripura State Civil Services (Revised pay) Rules, 1999 (for short “ROP Rules, 1999”). On the basis of ROP Rules, 1999, the pay scale of the petitioner (Rs. 850-2130/-) had been revised to Rs. 2900-5660/-. Accordingly, he was enjoying the said benefit of revision of pay scale as per ROP Rules, 1999. While enjoying the said benefit of revision of pay scale, the petitioner has completed 17 years of service on 27.09.2004 followed by completion of 25 years of service on 27.09.2012. According to petitioner, as per ROP Rules, 1999, the petitioner was entitled to CAS-II on completion of 17 years of service, and he is further entitled to ACP 3 since he had completed 25 years of service in terms of ROP Rules, 2009, but, the said benefit was not given to the petitioner. The petitioner had served legal notice upon the respondents on 28.06.2016. In response to the said notice claiming the aforesaid benefits, the respondents had sanctioned CAS-II and ACP-3 as well on 08.09.2016 and 26.10.2016 respectively (Annexure 5 and 6 to the writ petition).

4. The petitioner had been enjoying the said pay scale with the benefits of CAS-II and ACP 3, as stated here-in-above. But, the situation had been changed in view of the Note no. 3 under reference note no. 1 and 2 of the Department, File no. 6(122/PWD(E-II)/2018 (Annexure-8 to the writ petition) wherein it was informed that *“a senior Helper and similar other Group-D posts who got the scale of Rs. 850-2130/- (the highest grade of the graded scale No. 12) and revised to corresponding pay scale of Rs. 2750-4925/- and thereafter got one scale advancement in the pay scale of Rs. 2900-5660/- for completion of 7 years of service in the said highest grade pay scale before 01.01.1999 shall be treated to have availed 3 (three) Scale Advancements under TSCS (RP) Rules, 1999).*

*Hence, senior helper and similar other post holders shall not be entitled for any further financial upgradation under ACP in view of Rule-10 of TSCS (RP) Rules, 2009)”.*

The said “Note” was prepared on 09.04.2019 by the Under Secretary, Finance Department. On the basis of such “Note”, the respondent-PWD (R&B) had issued an office order dated 06.08.2019 wherein it was directed that *“the benefit of next higher Scale of pay Rs. 3050-5910/- granted earlier in favour of Sr. Helper is hereby cancelled and scale of pay Rs. 2900-5660/- is reinstated as per guideline given by the Finance Department vide letter No. F.1(4)-FIN(PC)/09 dated 07.08.2009”*. A list comprising the names of

similarly situated employees had been published where the name of the petitioner was also included.

5. The petitioner has challenged the said office order by way of filing a writ petition being no. WP(C) 1007 of 2019 (Annexure-12 to the writ petition) and the same was disposed of by a learned Single Judge of this Court under the order dated 04.02.2020, after making the following observation:-

**“Whatever be the ground for passing the impugned order, two things remain clear. Firstly, no notice or opportunity of hearing was granted to the petitioner before passing the said order and secondly, order is bereft of any reasons. In other words, the order is a non-speaking order.**

**Only on these grounds, the impugned order is set aside. The respondents shall issue a notice to the petitioner why his pay fixation should not be modified giving brief reasons for such proposal. The petitioner would have time of one month from the date of receipt of such a notice to respond. The concerned authority shall pass a fresh order citing brief reasons in support of conclusions”.**

6. In pursuance of the said order of this court, the respondents had issued a show-cause notice vide memorandum dated 11.05.2020 (Annexure-13 to the writ petition) to show cause as to why the pay scale of the petitioner should not be reinstated in the scale of Rs. 2900-5600/-. The petitioner had submitted a reply to the said show-cause notice on 27.05.2020 (Annexure-14 to the writ petition). Upon consideration of the said reply, the respondent-PWD (R&B) had issued a memorandum dated 08.06.2020 (Annexure-15 to the writ petition) cancelling the benefits of granting CAS-II and ACP 3 and reinstated his pay scale to Rs. 2900-5600/-. The petitioner has challenged the said impugned memorandum.

7. This court had granted an ad-interim relief to the petitioner to the effect that the respondents shall not carry out recovery of excess pay (stated to have

been received by the petitioner) pursuant to the impugned order dated 08.06.2020. The said interim order is still continuing.

8. I have heard Mr. A. Bhowmik, learned counsel appearing on behalf of the petitioner as well as Mr. D. Sarma, learned Additional GA appearing for the State-respondents.

9. Mr. A. Bhowmik, learned counsel appearing on behalf of the petitioner has submitted that indubitably the post of 'Khalasi' had been re-designated as 'Senior Helper' and by dint of such re-designation, the pay scale of the petitioner was rightly modified to grade scale of Rs. 400-775/- from Rs.370-650/-, having corresponding revised scale of pay of Rs. 850-2130/- upon introduction of ROP Rules, 1988. Thereafter, the pay scale of Rs. 850-2130/- was further revised to two pay scales, one for Rs. 2750-4925/-, and another for Rs. 2900-5660/-. The petitioner had been provided the benefit of pay scale of Rs. 2900-5600/- in view of the provision under sub-rule (xi) of Rule 10 of ROP Rules, 1999. The petitioner had jumped to the pay scale of Rs. 2900-5600/- instead of Rs. 2750-4925/- for the reason that the petitioner had completed 7 years of service prior to 01.01.1999. I have taken note of sub-rule (xi) of Rule 10 of ROP Rules, 1999, which reads as under:

**"10(xi). If an employee has completed more than 7 years of service in the scale of 850-2130 before 1.1.99, his pay will be fixed in 2900-5660 on 01.01.1999 with the pay fixation under FR-22(a)(i)".**

Mr. Bhowmik, learned counsel, has further submitted that ROP Rules, 1999 had made a provision to allow CAS-I on completion of 10 years of

service, CAS-II after completion of next 7 years i.e. 17 years of service and CAS-III after completion of next 7 years of continuous service. Since the petitioner had completed next 7 years of service i.e. 17 years of service i.e. on 27.09.2004, he was entitled to CAS-II. However, before completion of next 7 years i.e. 24 years of service ROP Rules, 2009 came into force w.e.f. 01.05.2009 prescribing that an employee will be entitled to ACP-3 on completion of 25 years of continuous service. The petitioner had completed 25 years of continuous service on 27.09.2012. So, according to learned counsel for the petitioner, he is entitled to ACP 3 on completion of total 25 years of continuous service as on 27.09.2012. Due to non-payment of CAS-II under ROP Rules, 1999 and ACP-3 under ROP Rules, 2009, the petitioner had served a legal notice upon the respondents. Accordingly, the petitioner was allowed the benefit of CAS-II and ACP 3. However, in view of the "Note" dated 09.04.2019 prepared by Finance Department, the benefits as provided to the petitioner, as stated here-in-above, were taken away by the respondents, which according to the petitioner, is illegal and arbitrary and contrary to the provisions of ROP Rules, 1988, ROP Rules, 1999 and ROP Rules, 2009.

**10.** Opposing the above narration of facts and the submissions advanced on behalf of the petitioner, Mr. D. Sarma, learned Addl. GA has submitted that the respondents has invoked sub-rule (x) of Rule 10 of the ROP Rules, 1999, which reads as under:

**“10(x). If any employee has pay fixed before 01.01.1999, as per column 4 in table under Note-4 of Part-B (Schedule III) of TSCS (Revised Pay) Rules 1988 or to the 2<sup>nd</sup> higher grade as per provision under Part-C (Schedule-III) of TSCS (Revised Pay) Rules, 1988, the movement will be considered equivalent to two advancements in the higher scales and benefit under the scheme will not be admissible except for existing Group-D, employees who can have one more movement”.**

11. To counter the above plea of learned Additional GA, Mr. Bhowmik, learned counsel for the petitioner has submitted that sub-rule (x) of Rule 10 of ROP Rules, 1999 would have no application in the case of the petitioner because no benefit had been provided to the petitioner under Note-4 of Part-B under Schedule-III of TSCS (Revised Pay) Rules, 1988 or the second higher grade as per provision of Part-C of Schedule-III of TSCS (Revised Pay) Rules, 1988, because those Rules had made provisions for extending benefits to the employees who had completed 10 years or 18 years of continuous service. Part-C relates to seniority and fitness of an employee and “Note-4 Part-B” relates to the employees who did not get any promotion after completion of 10 years or 18 years of service. The petitioner does not come within the purview of said sub-rule (x) of Rule 10 of the ROP Rules, 1999.

12. I have given my thoughtful consideration to the submissions advanced by the learned counsel appearing for the parties to the *lis*.

13. Before entering into the main controversy regarding fixation of pay scale of the petitioner, I deem it imperative to go through the meaning of different terminologies/expressions used in the ROP Rules, 1988 to understand the legislative intentions and modus for determination of pay



scales of the government employees. The expressions relevant to address the substantive issues are mentioned here-in-below:

**“Rule 3 (1) (a) ‘Basic Pay’ means the pay as defined in Fundamental Rule 9(21)(a)(i).**

**(b) ‘Existing Scale’ in relation to a Government servant means the ‘present scale’ applicable to the post held by the Government servant or as the case may be personal scale applicable to such Government servant, as on the 1<sup>st</sup> day of January, 1986 whether in a substantive or officiating capacity.**

**Explanation: x x x x x x x**

**(c) ‘Present Scale’ in relation to any post specified in Column 2 of Schedule III means the scale of pay, whether fixed or otherwise, specified against that post in Column 3 thereof.**

**Provided that where as modified present scale is specified in Column 5 of Schedule III against the post specified in Column 2 thereof, such modified present scale shall be the ‘present scale’.**

**Provided further that where a redesignation is specified in Column 4 of Schedule III against the post in Column 2 thereof the modified present scale shall be in relation to such redesignation post.**

**Note- x x x x x x**

**(d) ‘Revised Scale’ in relation to any post specified in Column 2 of Schedule III means the scale of pay specified against that post in Column 6 thereof.**

**Provided that where a redesignation is specified in Column 4 of Schedule III against the post in Column 2 thereof, the ‘revised scale’ shall stand in relation to such redesignated post.**

**(2) (a) x x x x x**

**(b) x x x x x**

**(c) x x x x x**

**(d) ‘Modified present scale’ in relation to any post specified in Column 2 of Schedule III means the scale specified against that post in column 5 thereof which replaces the ‘present scale’ specified in column 3.**

**This modified ‘present scale’ has been substituted by the following vide notification dated 02.11.1998, which reads as under:**

**II. Clause (d) of sub-rule (2) of Rule 3 (page 12 of Rules):-**

**(a) This clause shall be substituted by the following:**

**“(d) ‘Modified Present Scale’ in relation to any post specified in column 2 of Schedule-III means a scale which is higher than the present scale in relation to that post and is specified in column 5 against that post.**

**Provided that where a redesignation is also specified in column 4 of Schedule-III against the post in column 2 thereof, the modified present scale shall be in relation to such redesignated post”**

**(e) ‘Redesignation’ in relation to any post specified in Column 2 of Schedule III means the redesignation specified against that post in Column 4 by which the post shall be identified from 1<sup>st</sup> day of January, 1986 or from the date**

from which a Government servant elects under the proviso to Rule 5 of these Rules to come over to the revised scale.

(3) (a) x x x x x x

(b) 'Schedule' means a Schedule annexed to these Rules".

Rule 7 of the ROP Rules, 1988 deals with the notional fixation of pay of a government servant. It reads as under:

**"Rule 7 (1) The initial pay of a Government servant-**

**(i) who elects or is deemed to have elected under sub-rule (3) of Rule 6 to be governed by the revised scale on and from the 1<sup>st</sup> January, 1986.**

**OR**

**(ii) x x x x x x "**

Again, Basic Pay under Rule 7 of the ROP Rules, 1988 has been explained thus:

**"(A) (1) Basic Pay:**

The basic pay of the Government servant in the existing scale on the 1<sup>st</sup> day of January, 1986 or where the Government servant elects under Rule 5 to be governed by the Revised pay on and from the date on which he earns in the existing scale his next or any subsequent increment falling after 1-1-86 but not later than 31.12.87 in respect of the post held by him on 1.1.86, the basic pay of the Government servant on such later date shall be determined as follows:

(a)(i) Where the post in which the pay of the Government servant shall be fixed under these rules is the one and the same post in which he was brought over to the revised scale under the Tripura Government services (Revised Pay) Rules, 1982

Or,

(a)(ii) x x x x x x

And

x x x x x x –

(b) (i) Where a 'modified present scale' is specified in column 5 of Schedule III in relation to the post referred to in (a)(i) the basic pay of the Government servant shall be notionally refixed in the 'modified present scale' at the stage next above the pay earlier fixed in the existing scale under the Tripura Government Services (Revised Pay) Rules, 1982 (17<sup>th</sup> Amendment) or otherwise and regulated thereafter upto the date of his coming over to the revised scale under these rules. The pay thus notionally refixed shall be the basic pay for the purpose of sub-clause (A)(1)

Provided that if the Government servant earns his normal yearly increment on the date of his coming over to the revised scale, the basic pay shall be inclusive of such increment.

(b) (ii) x x x x x x x "

Now, Part A of Schedule I, deals with existing/present scale and corresponding revised scale with detailed break-up in reference to Rule 3(i)(b), Rule 3 (i)(c), Rule 3 (i)(d) and Rule 3 (ii)(a). The scales relevant to the case is taken into account, which are as under

| Existing scales of pay |                 |          |                                                                                                     | Revised scales of pay |              |          |                                                                                                                                                                                  |
|------------------------|-----------------|----------|-----------------------------------------------------------------------------------------------------|-----------------------|--------------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2                      | (b) Rs. 370-650 | Details  | Rs. 370-8-410-10-470-15-650                                                                         | 2                     | Rs. 800-1520 | Details  | Rs. 800-20-960-25-1160-30-1520                                                                                                                                                   |
|                        |                 | Break-up | Rs. 370-378-386-394-102-410-420-430-440-450-460-470-485-500-515-530-545-560-575-590-605-620-635-650 |                       |              | Break-up | Rs. 800-820-840-860-880-900-920-940-980-985-1010-1035-1060-1085-1110-1135-1160-1190-1220-1250-1280-1310-1340-1370-1400-1430-1460-1490-1520                                       |
| 3                      | (b) Rs. 400-775 | Details  | Rs. 400-12-520-15-535-20-775                                                                        | 2                     | Rs. 850-2130 | Details  | Rs. 850-30-1090-35-1370-40-2130                                                                                                                                                  |
|                        |                 | Break-up | Rs. 400-412-424-436-448-460-472-484-496-508-520-535-555-575-595-615-635-655-675-695-715-735-755-775 |                       |              | Break-up | Rs. 850-880-910-940-970-1000-1030-xx-1090-1125-1160-1195-1230-1255-1320-1335-1370-1410-1450-1480-1520-1570-1610-1650-1690-1730-1770-1810-1850-1890-1930-1970-2010-2050-2090-2130 |

Next, it will be relevant to take note of Part B of Schedule III, which deals with determination of revised scales. Sl. No. 30 under PW Department has dealt with the post of 'Khalashi' and its re-designation of pay-scale. As such, it is reproduced hereunder:-

| Sl.No | Name of the post                                                 | Present Scale     | Re-designation of the post, if any | Modified Present Scale, if any | Revised Scale | Remark |
|-------|------------------------------------------------------------------|-------------------|------------------------------------|--------------------------------|---------------|--------|
| 30    | Khalashi<br>(Internal/Elec/I.F.C./Mech /Civil)<br>Gauge Khalashi | 370-650<br><br>Do | Sr. Helper<br><br>Do               | Vide Graded Scale No. 12       |               |        |

Part 'C' of Schedule-III under sub-rule (3) of Rule 5, deals with the graded scale. Note No. 2 is relevant to determine the status/position of a government employee and the graded scale. Note No. 2 is reproduced hereunder, in verbatim: [page-123 of ROP Rules, 1988]

**" Note-2:- Movement of a Government servant from the lowest grade-scale to the successive higher post/grade scales shall be regulated as follows:-**

**(a) Subject to seniority and fitness a Government servant holding a post in the lowest post/grade shall be allowed to move-**

- (i) to the first higher post/grade on completion of 10 years of service in the lowest post/grade; and
- (ii) to the second higher post/grade on completion of 8 years of service in the first higher post/grade.
- (b) With the movement of a Government servant from a lower to a higher post/grade-
  - (i) the post/grade from which he moves shall be deemed to have been converted automatically into the higher post/grade; and
  - (ii) the Government servant shall acquire the designation of the higher post/grade.
- (c) Movement from a lower to a higher grade under (a) and (b) shall be treated as promotion and pay shall be fixed under FR 22.C
- (d) A new post under any of these categories of posts shall be created only at the lowest grade.
- (e) When a post under any of these categories of posts vacant due to retirement, death, resignation, discharge or transfer of a Government servant, the vacancy shall be deemed to have occurred at the lowest level of the category irrespective of the level of the post/grade which the government servant was holding at the time of retirement, death, resignation, discharge or transfer, as the case may be.
- (f) No new appointment under any of these categories of posts shall be made at a level other than the lowest:

Provided that appointment may, under special circumstances, be made at any level other than the lowest subject to the condition that a vacant post at the lowest level is available, in which case the lowest level post shall get automatically converted into the post of the required level to which the appointment is made".

Note 3 stipulates that:

**"Fixation of pay of the existing employees in the revised scale.**

- (i) Firstly, the redesignation of the post held by an employee shall be determined with reference to the entry, if any, on col. 4 of Part B of this Schedule.
- (ii) (a) Secondly, the modified present scale, if any, in which pay shall be notionally refixed under Rule 7 to work out the existing emoluments, shall be determined, and existing emoluments worked out accordingly.  
(b) Where posts with more than one existing scale are given a common redesignation and allowed a single modified present scale (as in the case of Grade III of graded scale No. 11) the notional refixation of pay in the modified present scale shall be made on the basis of pay which the government servant concerned draws in any of the existing scales and then the existing emoluments determined.
- (iii) Thirdly, the revised scale in which pay of a government servant is to be fixed shall be determined on the basis of length of service in the following manner:-
  - (a) If the total period of service rendered in any one or more than one post/grade in a category of graded scale upto 1. 1.86 or upto the date of

coming over to the revised scale is 10 years or more but less than 18 years, the pay shall be fixed directly in the revised scale specified in column 6 of this part of the Schedule in relation to the second higher (i.e. middle level) post/grade; and

(b) If the total period of service rendered in any one or more than one post/grade in a category of graded scale upto 1.1.86 or upto the date of coming over to the revised scale is 18 years or more, the pay shall be fixed directly in the revised scale specified in column 6 of this part of the Schedule in relation to the highest post/grade in the category.

Provided that where a Government servant is otherwise entitled to the revised scale prescribed for the highest post/grade, his pay shall be fixed in the revised scale of the highest post.

Provided further that where only two posts/grades are provided in a category of graded scale, the provision in (i) shall only apply.

**Example:-**

1. (i) Mr. X, holds the post of 'Storekeeper' in a Department in the existing pay scale of Rs. 430-850  
(ii) This post has been redesignated in part B of this Schedule as 'Junior Storekeeper' which has been accepted by Mr. X under Sub-rule (2) of Rule 6 and allowed modified present scale of Rs. 470-1025 and revised scale of Rs. 970-2400
2. Fixation of pay of Mr. X in the revised scale-
  - (i) The existing emoluments of Mr. X shall be worked out in the modified present scale of Rs. 470-1025 under Rule 7
  - (ii) If Mr. X has completed on 1.1.86 or on the date of coming over to the revised scale-
    - (a) 10 years of service, his pay shall be fixed in the revised scale specified in column 6 against the post of Storekeeper i.e. in the scale of Rs. 1250-2890 (and not in the scale of Rs. 970-2400); and
    - (b) 18 years of service, his Pay shall be fixed in the revised scale specified against the post of Senior Storekeeper i.e. in the scale of Rs. 1450-3710 (and not in the scale of Rs. 970-2400)

Mr. X shall thereafter be known as 'Storekeeper' or 'Senior Storekeeper' as the case may be."

14. Juxtaposing the above provisions including 'explanations' 'Note' and 'examples' with the case of the petitioner, then, it is seen that the petitioner was first appointed as 'Khalashi' with the pay scale of Rs. 370-650/- on 28.09 1987. This pay scale shall be his existing pay scale. Under ROP Rules, the post of 'Khalashi' had been redesignated as 'Senior Helper' under column no. (4) as indicated here-in-above. The petitioner belongs to Public Works

Department (“PWD” for short) and with such re-designation of the post of the petitioner, his graded scale was determined under graded scale no. (12) of Part ‘C’ of schedule III. Under grade scale no. (12), the “present scale” of the petitioner was determined at Rs. 400-775/- against his post being redesignated as ‘Senior Helper’. The modified pay scale of such re-designation has been shown at column no. (5) as Rs. 400-775/-. Thus, it is apparent that this “modified present scale” would be the “present scale” under proviso of Rule 3 of ROP Rules, 1988 having corresponding revised scale would be Rs. 850-2130/-, as mentioned in column no. (6) (*page 130 of ROP Rules, 1988*). Since, ROP Rules, 1988 was given effect from 01.01.1986 and the petitioner was appointed on 29.08.1989, his entry scale would be determined/fixed at Rs.850-2130/-.

15. Again, clarification was given about the consequence of such re-designation of the post of ‘Khalashi’. It was clarified by the communication dated 30.11.1988, that *in such cases the fixation had to be made according to the re-designation of the posts. Since these posts are re-designated as Senior Helper, the pay shall first be notionally fixed in the modified scale of Rs. 400-775/- and then to the revised scale of Rs. 850-2130/-*. In the case in hand, in view of the meaning of different expressions enumerated in ROP Rules, 1988, itself coupled with the aforesaid clarification dated 30.11.1988, in my considered view, the respondents had not committed any wrong in fixing the pay scale of the petitioner to the modified scale of Rs. 400-775/- upon his re-

designation of the post as 'Sr. Helper' from earlier designation as 'Khalashi' and, then, to the corresponding revised scale of Rs. 850-2130/- as per ROP Rules, 1988.

16. Thereafter, ROP Rules, 1999 was introduced being notified on 06.02.1999, the benefits of which were given w.e.f. 01.01.1996. With the introduction of ROP Rules, 1999, provision for Career Advancement Scheme (modified) had been made under Rule 10 w.e.f. 01.01.1999 by way of abolishing the graded scales. It is worthy to mention herein that though the ROP Rules, 1999 was given effect from 01.01.1996, but, benefit of CAS(Modified) was given effect from a posterior date i.e. 01.01.1999. The entire provision of Rule 10 of ROP Rules, 1999, being relevant may gainfully be quoted here-in-below, for convenience:

**"10. CAREER ADVANCEMENT SCHEME (MODIFIED) WITH EFFECT FROM 01.01.1999**

The State Government employees will have scale advancement by way of promotion, failing which by time bound movement in a higher scale as per table in Annexure „A“ after entry into service in the whole service life in the following manner:

(a) The employees entering by direct recruitment in scale no.1 as per statement at Annexure-A or corresponding scale earlier will have 3 scale advancement at the end of 10, 7 and 7 years of continuous and satisfactory service in the scale 1, 2 & 3 to the scale 2, 3 and 4 respectively unless they get promoted to a post of higher scale before the period at each stage.

(b) The employees entering by direct recruitment in the existing scales no.4 to 10 or revised scale no. 5 to 11 or corresponding earlier scale will have 2 scale advancement in next higher scales as per table in Annexure „A“ at the end of 10 and 7 years of continuous & satisfactory service in the entry scale and higher scale of promotion/gradation or advancement respectively, as the case may be, to the higher scales unless they get promoted to higher scale before the prescribed period at each stage.

(c) The employees entering by direct recruitment in the scale above 5500-10700 (pre-1996 scale of 1700- 3980 or pre-1986 scale of 780- 1780 or corresponding earlier scale) will have one scale advancement in the next higher scale as per table in Annexure „A“ at the end of 10 years of continuous & satisfactory service in the entry scale unless they get promoted to higher scale before the prescribed period.

**(d) The employees of Cadre service will have scale advancement as prescribed in the Annexure-B. This will also be effective from 01.01.1999.**

**(e) In the case of time bound advancement to higher scale pay will be fixed under FR 22(a)(i)."**

Sub-rule (xi) of Rule 10 of ROP Rules, 1999 provides that *if an employee has completed more than 7 years of service in the scale of 850-2130/- before 1.1.99, his pay will be fixed in 2900-5660/- on 01.01.1999 with the pay fixation under FR-22(a)(i).*

17. As I have said earlier, two pay scales were prescribed for the post of 'Senior Helper' under the ROP Rules, 1999, one for Rs. 2750-4925/- and another for Rs. 2900-5660/-. Since the petitioner had completed 7 years of service before 01.01.1999, his pay scale was fixed at Rs. 2900-5660 w.e.f. 01.01.1999 in the line of sub-Rule (vi) of Rule 10 of the ROP Rules, 1999, as aforestated and in that way, the petitioner had jumped one scale i.e. Rs.2750-4925/- and having availed the benefit of fixation of higher scale of Rs.2900-5660/- on 01.01.1999 he received the benefit of one scale advancement, which is to be treated as CAS-I as per Sub-Rule (xi) of Rule 10 of ROP Rules, 1999 since his entry scale was treated as Rs.850-2130/- in terms of ROP Rules, 1988.

18. Next, the petitioner had completed 17 years of service on 27.09.2004 as 'Senior Helper' without any promotion. So, as per Rule 10 of the ROP Rules, 1999, the petitioner would be entitled to second CAS i.e. CAS-II for his continuous and satisfactory service since he was not promoted to any higher



post. It is pertinent to mention here that the petitioner was not entitled for CAS-I for the reason that he had jumped one scale advancement under revision of ROP Rules, 1999 as he had directly entered into the scale of Rs. 2900-5660/-.

19. Thereafter, Rule 10 of ROP Rules, 1999 was further modified w.e.f. 01.10.2006 being Assured Career Progression(ACP). Rule 10 of ROP Rules, 2009 may be reproduced hereunder as reference, in extenso, for convenience:

**“10. Introduction of a new scheme titled Assured Career Progression (ACP) Scheme with effect from 1st January, 2006 replacement of existing CAS introduced under TSCS (Revised Pay) Rules, 1999.-**

**(1) Under the new scheme (A.C.P.), all Government employees in the PB-1, PB-2 & PB-3 shall be entitled to get a maximum of three financial upgradations, the first after 10 years of service under regular scale, 2nd after another 7 years of service (total 17 years) and 3rd after further 8 years of service (total 25 years) in their service career provided the concerned employee had not got up to three numbers benefits of scale upgradations including promotions already. In case of PB-4, the employees borne under Grade Pay Rs.3700/- (against pre-revised scale of Rs.7800-15,100/-), under Grade Pay Rs.4500/- (against pre-revised scale of Rs.10,000-15,100/-) and Grade Pay Rs.4800/- (against prerevised scale of Rs.10,650-15,850/-) would be entitled to get 3, 2 and 1 financial upgradations respectively under the scheme provided the concerned employee had not got scale upgradations including promotion up to 3, 2 & 1 respectively already.**

**(2) While determining eligibility of the Government employees under this ACP, it should be considered how many times the concerned employee got the benefit of scale upgradation including promotion after his direct entry into the service in the State Govt. or, as the case may be, after his direct entry into the cadre service of the State Govt. in which he is presently serving. Each case of promotion or scale upgradation availed by him after his direct entry into cadre where he is presently serving or, as the case may be, in the post/service of a Department will be treated as consumption of one ACP. This will mean that for those employees who entered the cadre service through promotion, the benefit of this promotion along with promotion/scale upgradation availed by him before entry into the cadre service will also be counted as consumption of ACP.**

**(3) For providing benefit under ACP(other than benefit already provided under CAS), every Head of Office shall initiate proposal under prescribed formats(which are being circulated subsequently by the Finance Department) to the Head of Department for the employee(s) whose ACP becomes due. On receipt of these proposals from the Head of Offices, the Head of Department will arrange scrutiny at**

his end and issue formal communication sanctioning the ACP in favour of eligible cases. On receipt of the communication of sanction, the Head of Office shall make fixation under ACP and record the same in the service book of the concerned employee.

(4) Those Government employees who had completed 10 years of service before 1.1.2006 but had not got or consumed any benefit of promotion/scale upgradation under revised pay rules framed in the past by the State Government from time to time, they will now be provided the benefit of 1<sup>st</sup> ACP from the date of his coming over to revised pay structure under these rules. Similarly those Government employees who had completed 17 years of service before 1.1.2006 but had got/consumed no benefit or got/consumed one benefit of promotion or scale upgradation under revised pay rules framed in the past by the State Government from time to time, they will now be provided the benefit of 2<sup>nd</sup> ACP directly from the date of his coming over to the revised pay structure under these rules. In respect of Government employees who had completed 25 years of service before 1.1.2006 but had not got/consumed any benefit of promotion/scale upgradation or got/consumed upto two benefits of promotion/scale upgradation under revised pay rules framed in the past by the State Government from time to time, they will now be provided the benefit 3<sup>rd</sup> ACP directly from the date of his coming over to the revised pay structure under these rules. The benefit under this provision should be allowed subject to fulfillment of all conditions stipulated in this rule.

(5) The scheme envisages grant of only financial benefits (through financial upgradation) to the Govt. servant concerned on a person basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose.

(6) The financial upgradation under the scheme will be purely personal to the employee concerned and will have no relevance to his seniority position. There will be no change in his designation functional/reporting responsibilities. Moreover, other benefits/facilities available for the promotion posts would also not be available him/her until and unless the official has been duly promoted to the higher post.

(7) Only the benefit of fixation of pay will be available at the time of financial upgradation under this scheme. For this, an increase of one increment in the existing pay in his/her Pay Band (i.e. 2.5% of Band Pay plus Grade Pay) along with next available Grade Pay shall be admissible as benefit of financial upgradation under this scheme. However, in cases where financial upgradation and promotion fall in the same Grade Pay, in that case if any employee has already got the benefit of financial upgradation under ACP, he will not get any further financial benefit of increment etc. for his promotion in the same Grade Pay. He will, however, thereafter be entitled to the higher designation and all the functional responsibilities and facilities available for the higher post.

(8) Besides providing one increment @ 2.5% and the next available Grade Pay under the ACP, the concerned employee will continue to remain in his existing Pay Band. However, in the event of his crossing the maximum of the Pay Band as a result of this upgradation, she/he will move to the next higher Pay Band but without any change in the earlier Grade Pay.

Provided, those Government employees who had got the benefit of CAS under TSCS (Revised Pay) Rules, 1999 between period 1.1.1999 to 31.12.2005 moving to the promotion scale without having benefit of FR 22(I)(a)(1) but got/will get functional promotion in the same pre-revised pay scale or to the revised pay structure corresponding to the same pre-revised pay scale after coming over to the revised pay scale, will be entitled to get the benefit of one increment under revised pay structure at the time of functional promotion in the same pay scale.

(9) Grant of higher pay scale under the Scheme shall be conditional to the fact that an employee, while accepting the said benefit shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently.

(10) If a Government employee, after availing the financial upgradation under the ACP Scheme subsequently refused to accept the regular promotion, the financial upgradation already granted will not be withdrawn. However, the subsequent financial upgradations will get postponed suitably by the Administrative Department.

(11) For the purpose of movement under ACP, the concerned Government employee shall be eligible to opt to get his pay fixed from the date of his next increment as provided in the Note No.1 & 2 below rule 12.

(12) Those Government employees who got benefit of CAS after January, 2006 and exercised option to come to the revised pay structure before the date of receipt of benefit of concerned CAS provided under the TSCS(Revised Pay) Rules, 1999, their pay shall be fixed notionally in the revised pay structure providing the benefit of ACP in place of CAS provided earlier. Those employees who had been provided benefit of CAS-3 on completion of 29 years of service on or after 1.1.2006, they shall be entitled to 3<sup>rd</sup> ACP benefit on completion of 25 years in place of 29 years of service under CAS. But such benefit will not be admissible prior to 1.1.2006."

20. The petitioner completed 25 years of service on 27.09.2012. Before his completion of 25 years of service, ROP Rules, 2009 came into force, which had made a provision to grant ACP-3 after completion of 25 years of service. It is necessary to mention here that the petitioner was entitled for CAS-III after completion of 24 years of service under ROP rules, 1999, but, since before completion of 24 years of service, ROP Rules, 2009 came into force, he was guided by ROP Rules, 2009 and by dint of that ROP Rules, 2009, the petitioner was granted the benefit of ACP-3 since he had completed 25 years of service on 27.09.2012 after introduction of ROP Rules, 2009.

21. At this juncture, I have given my due consideration to the submission of learned Additional GA that the respondents had invoked the provision of proviso (x) of Rule 10(e) of ROP Rules, 1999. Proviso (x) reads as under:

**“(x) If any employee has pay fixed before 01.01.1999, as per column 4 in table under Note-4 of Part-B (Schedule III) of TSCS (Revised Pay) rules, 1988 or to the 2<sup>nd</sup> higher grade as per provision under Part-C (Schedule-III) of TSCS (Revised Pay) rules 1988, the movement will be considered equivalent to two advancements in the higher scales and benefit under the scheme will not be admissible except for existing Group-D, employees who can have one more movement.”**

22. A bare perusal of the said *proviso* makes it clear that this *proviso* will be applicable to all the employees except for existing ‘Group-D’ employees. To understand *proviso (x) of Rule 10(e)*, it would be convenient if “Note-4” of Part-B (Schedule-III) of ROP Rules, 1988 is reproduced, in verbatim, hereunder: [page 30 of ROP rules, 1988]

**“Note-4: Regulation of pay of employees covered by Note-3 in future:**

**(a) The revised scale of pay as indicated in (b)(2) of Note 3 shall also be allowed to the following employees on completion of 10 years or 18 years of service, as the case may be, in their respective posts if they do not get any promotion otherwise:-**

**(i) those who at the time of coming over to the revised scale under these rules did not complete 10 years or 18 years of service, as the case may be; and**

**(ii) those are appointed to a post on or after 1.1.86.**

**(b) In the cases covered by (a) pay in the higher revised scale(s) shall be fixed under the provision of FR.22(a)(i).**

**The existing scales, revised scales, next higher scales and scales above the next higher scales which shall apply to cases covered by Note-3 are shown below:-**

| Existing scales of the posts (to which first appointed) | Revised scale specified in col. 6 of this part of the Schedule | Revised scale next higher than the scale in Col. 2 Ref:- (b)(2)(i) of Note-3 | Revised scale next above the next higher scale in Col. 3 Ref:- (b)(2)(ii) of Note-3 |
|---------------------------------------------------------|----------------------------------------------------------------|------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| 1                                                       | 2                                                              | 3                                                                            | 4                                                                                   |
| i) 430-850                                              | 970-2400                                                       | 1020-2620                                                                    | 1250-2890                                                                           |
| ii) 470-1025                                            | 1020-2620                                                      | 1250-2890                                                                    | 1300-3220                                                                           |
| iii) 550-1245                                           | 1250-2890                                                      | 1300-3220                                                                    | 1450-3710                                                                           |
| iv) 560-1300                                            | 1300-3220                                                      | 1450-3710                                                                    | 1700-3980                                                                           |
| v) 600-1440                                             | 1450-3710                                                      | 1700-3980                                                                    | NIL                                                                                 |
| (and their corresponding pre-revised scales)            |                                                                |                                                                              |                                                                                     |

Now, I deem it imperative to reproduce entire “Note-3” of Part-B (Schedule-III), which is as under:

**“Note-3: Fixation of pay of certain categories of existing employees:**

**(a) Except in case of an employee-**

- (i) who holds a post for which graded scales are prescribed, or**
- (ii) who holds a post for which a Selection grade or senior grade post is also provided, or**
- (iii) who holds a post of a Teacher in a Higher Secondary School or a Midnic and High Stage level school or a Primary School, pay of an existing employee who was first appointed to a post specified in this part of the Schedule which carries any of the existing pay scales of Rs. 430-850, Rs. 470-1025, Rs. 550-1245, Rs. 560-1300 and Rs. 600-1440 shall be fixed in the revised scale in the manner indicated in (b) below, if the employee concerned has not got any promotion for 10 years since his first appointment to the post.**

**(b) For the purpose of (a)-**

- (1) First the refixation of pay in the modified present scale, if any, shall be made and the existing emoluments determined as per Rule 7 of these Rules.**
- (2) Thereafter, the revised scale in which pay is to be fixed under these Rules shall be determined in the following manner:-**
  - (i) where the employee concerned has completed on 1.1.86 or on the date of coming over to the revised scale 10 years of service in the post without any promotion since his first appointment to the post, pay shall be fixed in the scale next higher than the revised scale specified in column 6 of this Part of the Schedule in relation to that post; and**
  - (ii) where the employee concerned has completed on 1.1.86 or on the date of coming over to the revised scale 18 years of the service in the post without any promotion since his first appointment to the post, pay shall be fixed in the scale next above the scale which is next higher than the revised scale specified in column 6 of this part of the Schedule in relation to that post**  
**[Please see table given below Note-4]**

**Provided that the provision in (ii) shall not apply to an employee who is directly appointed to a post in the existing scale of Rs. 600-1440.**

**c) when an employee gets promotion to a higher post after his pay has been fixed in the revised scale in the manner indicated in (b) his pay shall be fixed in the following manner-**

- (i) if the scale of the promotion post is the same as that in which his pay has been fixed in the revised scale, pay on promotion shall be fixed under F.R. 22(a)(i) and he shall draw his next increment on the anniversary date; and**
- (ii) if the scale of the promotion is higher than that in which his pay has been fixed in the revised scale, pay on promotion shall be fixed under F.R. 22(c) with reference to his pay on the date of promotion.”**

A conjoint reading of “Note-3” and “Note-4”, which already have been reproduced in the preceding paragraphs make it aptly clear that the said

“Notes” speak about fixation of revised scales for such employees who had completed 10 years or 8 years of service without promotion. In my opinion, this “Note-4”, will not in any way be applicable, or, rather, has no relevancy in the context of the present case since the petitioner was only appointed as ‘Khalashi’ on 28.09.1987, which post was re-designated as ‘Senior Helper’ under ROP Rules, 1988 having given its effect from 01.01.1986 and provided the Graded Scale no. 12 at Rs. 400-775/- under Part-C (Schedule-III), which reads as under:- [page 130 of ROP Rules, 1988 alongwith the name of post, present scale, re-designation, modified present scale and revised scale]

| Graded Scale No | Name of the post                | Present Scale                            | Redesignation of the post, if any                  | Modified present scale, if any | Revised Scale                    | Remarks |
|-----------------|---------------------------------|------------------------------------------|----------------------------------------------------|--------------------------------|----------------------------------|---------|
| 1               | 2                               | 3                                        | 4                                                  | 5                              | 6                                | 7       |
| 12              | Helper with various designation | 400-775<br>370-650<br>330-460<br>340-530 | Senior Helper<br>Helper Grade I<br>Helper-Grade II | 400-775<br>370-650<br>340-530  | 850-2130<br>800-1520<br>775-1130 | -       |

**23.** Furthermore, the petitioner was not given any benefit under Part-C (iii) of TSCS (Revised Rules, 1988). Again, I deem it imperative to refer to the definition of ‘existing scale’ and ‘present scale’ provided under Rule 3 of ROP Rules, 1988. Rule 3(1)(b) defines ‘*Existing Scale*’, which reads as under:

**‘Existing Scale’ in relation to a Government servant means the ‘present scale’ applicable to the post held by the Government servant or as the case may be, personal scale applicable to such Government servant, as on the 1<sup>st</sup> day of January, 1986 whether in a substantive or officiating capacity.’**

Rule 3(1)(c) defines ‘*Present Scale*’, which reads as under:

**‘Present Scale’ in relation to any post specified in Column 2 of Schedule III means the scale of pay, whether fixed or otherwise, specified against that post in Column 3 thereof.’**

There are two provisos under rule 3, these are:

**‘Provided that where a modified present scale is specified in Column 5 of Schedule III against the post specified in Column 2 thereof, such modified present scale shall be the ‘present scale.’**

**‘Provided further that where a redesignation is specified in Column 4 of Schedule III against the post in Column 2 thereof the modified present scale shall be in relation to such redesignation post.’**

24. Now, if we look at column (ii), the name of the post which the petitioner was holding earlier to re-designation was ‘Khalashi’. At column (iii), the existing scale or present scale was shown as Rs.370-650/-. At column (iv), the post of ‘Khalashi’ is shown being re-designated as ‘Senior Helper’. Thus, as per second proviso, the modified present scale would be in relation to the re-designation of the post of “Khalashi” as “Sr. Helper”. The modified pay scale has been shown at column no. (v) as Rs. 400-775/- and the corresponding revised scale is shown as Rs. 850-2130/-. So, on combined reading of second proviso of Rule 3 (i) and the clarification dated 30.11.1988 given by the Finance Department, Government of Tripura makes it clear that the respondents had not committed any wrong in fixing the pay-scale of the petitioner first at the modified pay-scale of Rs. 400-775/- notionally and then providing him the benefit of the corresponding revised scale of Rs. 850-2130/- in compliance with ROP Rules, 1988 treating the modified scale as “present scale”.

25. Needless to say, that the petitioner would naturally be entitled for the corresponding revised pay scale by operation of ROP Rules, 1999 and ROP Rules, 2009. Since the petitioner was not promoted to any higher post, the

petitioner was given the benefit of CAS-II, as prescribed under ROP Rules, 1999 and ACP 3, as prescribed under ROP Rules, 2009, after completion of 25 years of service.

**26.** For the reasons analysed here-in-above, in my considered view, the impugned memorandum dated 08.06.2020 issued by the Engineering Officer, PWD, which is under challenge, is not in consonance with the ROP rules, 1988, 1999 and 2009. Therefore, the cancellation of benefits given to the petitioner as CAS-II and ACP-3 and his reinstatement to the scale of Rs. 2900-5660/- is devoid of any merit, and consequently, the said memorandum dated 08.06.2020 will not in any way be applicable to the petitioner in view of aforesaid discussions. Accordingly, the memorandum dated 08.06.2020 whereby and whereunder the respondents had decided to take away the benefits of CAS-II and ACP-3 as allowed to the petitioner held to be illegal and arbitrary being contrary to the provisions of ROP Rules, 1988 and 1999. In the opinion of this Court, the State-respondents while issuing the said memorandum has misread and misconstrued the “modified present scale”, graded scale and existing scale and the provision of Rule 10 of ROP Rules, 1999.

**27.** The State-respondents could not come up with specific plea as to how the petitioner was allowed three scale advancements. However, what is garnered from the submission of learned Addl. G.A. that fixation of pay scale of the petitioner at revised scale of Rs.850-2130/-(the revised scale of Rs.400-



775/-) without fixing his pay scale at Rs.800-1520/- (the revised scale of Rs.370-650/-) ought to have been treated as one scale movement as shown in Rule 3 of Part-A (Schedule-1) of ROP Rules, 1988. If that be so, then, in my opinion, the State-respondents, particularly, Finance Department totally misconstrued the said rule. The State Finance Department has failed to understand that upon re-designation of the post of Khalashi as “Senior Helper”, the graded scale of the petitioner was fixed at Rs.400-775/- as shown in Column No.5 under the caption “modified present scale” which would be treated as present scale/existing scale, the corresponding revised scale of Rs.400-775/- being Rs.850-2130/- ROP Rules, 1988 was made operative w.e.f. 1.1.1986. The petitioner being appointed on 28.04.1987 his initial i.e. entry pay scale was fixed at Rs.850-2130/-. Thus, the fixation of pay scale of the petitioner at Rs.850-2130/- being the entry pay scale of the petitioner cannot in any way be treated as movement to one scale advancement. It is further clarified that if the respondents had treated the graded scale of Rs. 400 - 775/- and corresponding revised scale of Rs. 850 - 2130/- as movement of two scale advancements, then, it will be a mere misnomer and fallacious. This conclusion of this court is further re-inforced in view of the clarification given by the Finance Department, Government of Tripura under communication dated 30.11.1988 as quoted here-in-above.

28. Further, it will be imperative to note that a Division Bench of this court (*comprising of Sanjay Karol, J. the then CJ and S. Talapatra, J*) confirming the view of learned Single Judge of this court [ *in W.P.(C) No. 386 of 2015 titled as Dilip Kumar Guha & ors. vs. State of Tripura & ors. alongwith other related cases*] while addressing similar nature of issues had drawn similar analogy in writ appeals being **W.A. No. 78 of 2016**, *titled as State of Tripura & 2 others vs. Sri Dilip kumar Guha* and **W.A. No. 111 of 2016** *titled as State of Tripura & 2 others vs. Sri Thakur chand Debnath*.

29. On minute reading of the aforesaid judgment, it becomes aptly clear that the division bench in the cases (*supra*) had held that *an employee who was appointed on or after 01.01.1986 (i.e. the effective date of operation of ROP Rules, 1988) would be presumed to be designated as per re-designation of the post mentioned under ROP Rules, 1988 and the prescribed revised pay scale was held to be treated as the lowest pay scale i.e. the entry level pay scale of such employee.*

30. I have perused the judgment passed by a learned Single Judge of this court (A. Kureshi, J, the then CJ) in **W.P.(C) 1266 of 2019**, *titled as Sri Kanai Saha and others vs. State of Tripura and others* where learned Judge had taken a different view than that of the view of the Division Bench of this Court as referred to above regarding fixation of pay scale of a similarly situated employee. It is noticed that the judgments passed in cases of **Dilip kumar Guha** (*supra*) and **Thakurchand Debnath** (*supra*), were not brought

to the notice of the learned Single Judge while disposing of the said case. Moreso, the substantive rules as contemplated in Rule 3 and Rule 7 of the ROP Rules, 1988 were also not taken into consideration while disposing of the case of **Kanai Saha (supra)**. As such, in my opinion, the said judgment should be declared as *per incuriam*. Accordingly, I declare the judgment passed in **Kanai Saha (supra)** as *per incuriam* and thus, not binding upon this court.

**31.** In sequel, the benefits as already provided to the petitioner sanctioning CAS-II by order dated 08.09.2016 and ACP-3 by order dated 26.10.2016 stand valid, and is, therefore, restored since the petitioner did not get any promotion after completion of 17 years and 25 years of continuous and satisfactory service. I have already held that the petitioner had consumed CAS-I after completion of 7 years of service when he directly moved to the scale of Rs. 2900/- - 5600/- instead of Rs. 2750/---4925/-, which is to be treated as one scale advancement.

**32.** It is submitted that in the intervening period, the petitioner has not been provided with the legitimate pay-scale for which he is entitled to. The respondents are directed to sanction all the benefits to the petitioner including arrears in the light of this judgment and order. The entire exercise shall be completed within a period of 6 (six) months from the date when the petitioner shall furnish a copy of this order to the respondents.

33. Having viewed thus, the instant writ petition stands allowed. The impugned memorandum dated 08.06.2020 under reference No. F.6(122)-PWD (E-II)/2018/2579-619 issued by the Chief Engineer, PWD (R&B), Agartala, Tripura, is accordingly set aside and quashed.

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

**JUDGE**

