

**HIGH COURT OF TRIPURA
AGARTALA**

WA 307 of 2021

Shri Gautam Roy and Ors

-----Appellant(s)

Versus

The State of Tripura and Ors.

-----Respondent(s)

For Appellant(s)	: Mr. Somik Deb, Senior Advocate. Mrs. Riya Chakraborty, Advocate.
For Respondent(s)	: Mr. M. Debbarma, Addl.GA.
Date of Argument	: 23.08.2023
Date of Pronouncement	: 30.08.2023.
Whether fit for reporting	: Yes/No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment and order (Oral)

(T. Amarnath Goud), J

This is an appeal under Rule 2 of the Chapter VA of the Gauhati High Court Rules read with Article 226 of the Constitution of India, against the impugned Judgment & Order dated 04.02.2021 passed by the learned Single Judge in WP(C) 69 of 2015.

[2] The reliefs sought by the petitioner in the WP(C) WP(C) 69 of 2015 are as follows:

(i) *Issue Rule upon the respondents to show cause as to why the respondents should not transmit all records relating to the case of the petitioners.*

And

(ii) *As to why a writ in the nature of Mandamus should not be issued directing the respondents to grant pay scale of Rs.4200-Rs.8,650 as first CAS and Rs.5000-10,300 as second CAS to the petitioners w.e.f. the respective dates of their entitlements along with arrears.*

And

(iii) *As to why such other order/orders should not be passed so as to give full relief to the petitioner and upon causes shown to make the rule absolute.*

[3] After hearing the learned counsel for the parties, the learned Single Judge has observed in the following manner while dismissing the petition of the petitioners:

"Learned counsel for the petitioners placed heavy reliance on a decision of learned Single Judge of Gauhati High Court in case

of Tripura Physical Education Employees Association and others vrs. The State of Tripura & 3 others dated 14.06.2006 and pointed out that the said decision was confirmed by the Division Bench. However, it may be noted that the said decision was rendered in the background of ROP, 1988. Thus, the career advancement or career progression scheme as contained in ROP, 1999 with which we are concerned, was not under consideration for interpretation. The career advancement scheme contained in the previous rules was vastly different. The said decision, therefore, would have no application."

[4] Being aggrieved and dissatisfied with the impugned order dated 04.02.2021, the appellants have preferred the present writ appeal before this court.

[5] It is the case of the appellants that they were employed as Junior Instructors, posted under the Directorate of Youth Affairs and Sports (Education) Department, Government of Tripura at various stations in the State of Tripura. The appellants contended that they continued to be Junior Physical Instructors without having any promotional avenue, and those who have completed even more than 20 years of service as Junior Physical Instructors are still continuing in the same post. They were entitled to the grant of first CAS, in the next higher scale of Rs.4,200-8650/-, on completion of 10 years of service and to the grant of second ACP, on completion of next 7 years of service in the higher scale of Rs.5000-10,300/- but the appellants contended that they were granted lower pay scale of Rs.4,000-7890/- as first ACP, and Rs.4200-8650 as second ACP. The appellants filed a writ petition before this Court and by a Judgment & Order dated 04.02.2021 the same was dismissed.

[6] Mr. Somik Deb learned senior counsel assisted by Mr. Riya Chakraborty, learned counsel appearing for the appellants have submitted before this court that the appellants were entitled to the grant of first CAS, in the next higher scale of Rs.4,200- 8650, on completion of 10 years of service, and to the grant of second ACP, on completion of next 7 years of service, in the higher scale of Rs.5000-10,300/- but the

appellants contented that they were deprived of the grant of ACP accordingly, and instead they were granted lower pay scale of Rs.4,000-7890/- as first ACP, and Rs.4200-8650 as second ACP.

[7] It is further contended by the counsel for the appellants that the Accountant General, Tripura clarified that Junior Physical Instructors were entitled to the pay scale of Rs.4,200-8,650/- as first ACP, but the Finance Department, Government of Tripura illegally refused to accept the said clarification, and thereby, the State respondents have continued deprivation of the appellants from receiving the benefit of CAS as per Rules.

[8] Counsel for the appellants has further contended that while passing the impugned Judgment & Order dated 04.02.2021, the Hon'ble Single Judge has failed to appreciate that all the appellants were recruited to the post of Junior Physical Instructors, when the Tripura Civil Services (Revised Pay) Rules, 1988, was in force whereunder the pre-revised pay scales, admissible to the posts of Junior Physical Instructor, Physical Instructor and Senior Physical Instructor were noted as Rs.430-850/-, no separate pay scale for Physical Instructor and Rs.560-1300/- respectively, and the corresponding revised pay scale, under the said Tripura Civil Services (Revised Pay) Rules, 1988, were noted as Rs.970-2400/-, Rs.1250-2890/- & Rs.1450-3710/- respectively.

[9] Moreover, while passing the impugned Judgment & Order dated 04.02.2021, the Hon'ble Single Judge has failed to appreciate that the pre-revised pay scale, admissible to the post of Physical Instructor was Rs.1300-50-1700-55-2140-60-3220/-, and therefore, applying the principle of scale to scale fitment, under the prescriptions, contained in Annexure-A of the Tripura Civil Services (Revised Pay) Rules, 1999, the revised pay scale, admissible to the said post of Physical Instructor ought to have been Rs. 4200-120-6000-130-7300- 150-8650/-

[10] In course of their submission they have further contended that while passing the impugned Judgment & Order dated 04.02.2021, the Hon'ble Single Judge has failed to appreciate that the pre-revised pay scale, admissible to the post of Senior Physical Instructor was Rs.1450-60-1930-65-2450-70-3710/-, and therefore, applying the principle of scale to scale fitment, under the prescriptions, contained in Annexure-A of the Tripura Civil Services (Revised Pay) Rules, 1999, the revised pay scale, admissible to the said post of Senior Physical Instructor ought to have been Rs.5000-130-6690-150-8940- 170-10300/-.

[11] The counsel for the appellants has prayed before this court to either consider pay scale under Annexure-C which has been discussed in the previous paragraph or under Annexure-A of the said Rules, 1999

Existing Scales of Pay	Revised Scales w.e.f. 01.1996
5. 970-40-1290-1650-50-2400/-	6.3200-90-4280-100-5480-110-6030/-
7.1250-45-1610-50-2010-55-2890/-	8.4000-110-5650-120-6850-130-7890/-
9.1450-60-1930-65-2450-70-3710/-	10.5000-130-6690-150-8940-170-10300/-

[12] On the other hand, Mr. M. Debbarma, learned Addl.GA while denying the claim of the appellant has referred to the Civil Services (Revised Pay) Rules, 1999, the relevant portion of which is extracted herein under:

30	Senior Physical Instructor/ Junior Physical Instructor	Junior - Senior	970-2400 1250-2890 1450-3710	3300-7100 4200-8650 5000-10300
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[13] It is also contended by the counsel by the respondents that there are three designated posts of Physical Instructor viz; Junior Physical Instructor, Physical Instructor and Senior Physical Instructor under TSCS(Revised Pay) Rules, 1988 the scales of pay of Jr. Physical Instructor, Physical Instructor and Sr. Physical Instructor were Rs.970-2400/-, Rs.1250 - 2890/- and RS.1450-3710/- respectively with the

introduction of TSCS (Revised Pay) Rules, 1999. The scales of Jr. Physical Instructor, Physical Instructor and Sr. Physical Instructor were revised to Rs.3300-7100/- Rs.4200 -8650/- and Rs.5000-10300/- respectively.

[14] Rule 4 of TSCS (Revised Pay), 1999 states from the date of commencement of TSCS(Revised Pay) Rules, 1999 the scale of pay of every post/grade whose existing scale is specified in column (3) of Annexure-3 shall be as specified in Column (4) thereof with effect from 01.01.1996. So, the figures reflected in Column 3 of Annexure-C of the ROP rules 1999 refers to the pay scale of a post under TSCS (Revised Pay) Rules, 1988 figures at Column 4 refers to corresponding revised scale under TSCS (Revised Pay) Rules, 1999.

[15] The matter relating to implementation of CAS(modified) has been mentioned at Rule 10 of the TSCS(Revised Pay)Rules, 1999. As per Rule 10(b) of the TSCS (revised Pay), 1999 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 the next higher scales as per table in Annexure-A of the ROP Rules 1999 at the end of the 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.

[16] Further Proviso (vii) ibid mentions that by way of scale advancement in this scheme, the CAS scale cannot exceed the promotion scale. (However, CAS scale can become same as promotion scale.)

[17] It is worthy to point out that Note at the end of Annexure-C of TSCS (Revised Pay) Rules, 1999 deserves some reference. Note 1 state that the posts not appearing in the list will have revised scale as shown in column-2 Annexure-A corresponding to the existing scale in column -1. It means that if any post were left out from the table at Annexure-C due to

inadvertent mistake, the scale of pay of such post would be according to the revised scale of pay mentioned in corresponding Coloumn Annexure-A of TSCS(Revised Pay) Rules, 1999.

[18] Note 2 at the end of Annexure-C states that the (-) in the prefix/suffix column means that post has name as shown in Coloumn 2 without any suffix or prefix. In other case, the posts may be read along with prefix/suffix if indicated in Coloumn 2A. For example, the post of Physical Instructor as appears at Sl.30 of Education Department (Higher Education) or at Sl No.6 of Education Department (Middle and High Stage Schools) can be read in three different formats viz.) Junior Physical Instructor, Physical Instructor, and Senior Physical Instructor. Wherever Junior is mentioned at Column 2A, it shall be read as Junior Physical Instructor. Wherever (-) is mentioned at Column 2A, it shall be read as Physical Instructor and wherever Senior is mentioned at Column 2A, it shall be read as Senior Physical Instructor.

[19] From preceding paragraphs it is clear that the claim of the petitioners for entitlement of first CAS in the next higher scale of Rs.4200-8650/- on completion of 10 years of service and next CAS/ACP in the next higher scale of Rs.5000-10300 on completion of 7 years of service is unjustified. The petitioner would have claimed those scale had they got promotion in the post of Physical instructor and Senior Physical Instructor as per ROP Rules, 1999.

[20] It is seen from the record that neither there is any impugned order nor any impugned action which is under challenge and mandamus cannot be issued since there is no cause of action. However, this issue was not looked into at the time of admission by this court in the year 2015. However, the writ petition had been heard and the same has been dismissed on merits after hearing both sides in the following manner:

"Learned counsel for the petitioners placed heavy reliance on a decision of learned Single Judge of Gauhati High Court in case of

Tripura Physical Education Employees Association and others vrs. The State of Tripura & 3 others dated 14.06.2006 and pointed out that the said decision was confirmed by the Division Bench. However, it may be noted that the said decision was rendered in the background of ROP, 1988. Thus, the career advancement or career progression scheme as contained in ROP, 1999 with which we are concerned, was not under consideration for interpretation. The career advancement scheme contained in the previous rules was vastly different. The said decision, therefore, would have no application."

[21] Aggrieved thereby the present writ appeal has been preferred by the appellants. It is seen from the record and in the pleadings the petitioners are so many in numbers and it relates to their service benefit. In view of this, the petitioners have not placed any individual information on record with regard to their date of appointment, when they completed their first ten years of service and subsequent seven years of service, the terms and conditions of service and under what ROP rules were made applicable for their appointment. Neither the appellants have made certain important information available for deciding the matter on merit. The petitioners (the appellants herein) could have been advised for approaching the respondents first for ventilating their grievances and represent their legitimate rights and entitlement. Thereafter, if aggrieved, they could approach this court seeking mandamus. The appellants, as it is evident, have placed reliance on the pre-revised pay scales of Rs.970-2400/-(corresponding to the revised pay scale of Rs.3200-6030/-), Rs.1250-2890/- (corresponding to the revised pay scale of Rs.4000-7890/-), and Rs.1450-3710/- (corresponding to the revised pay scale of Rs.5000-10,300/-) respectively. Moreover, the counsel for the appellants has prayed before this court to either consider pay scale under Annexure-A or C.

[22] Mr. M. Debbarma, learned Addl.GA appearing for the respondents has submitted before this court that no violation of legal right has been made against the appellants as they have been rightly allowed fixation of pay in the scale of Rs.4000-7890/- as entitlement of

first CAS on completion of 10 years of continuous and satisfactory service in the post of Junior Physical Instructor and fixation of pay in the scale of Rs.4200-8650/- as second CAS on completion of 17 years continuous and satisfactory service remaining in the same post of Junior Physical Instructor.

[23] Attention has drawn to the sub-clause (vii) of Clause 10 TSCS (Revised Pay) Rules, 1999 which reads as follows:

"10. Career Advancement Scheme (Modified) with effect from 01-01-1999

...

(vii) By way of scale advancement in this scheme, the CAS can not exceed the promotion scale. (However, CAS scale can become same as promotion scale.) In such cases, the scale advancement will not take place at the prescribed period till actual promotion is done. However, on completion of the prescribed period in this scheme, he will earn an increment on 1.1.99 or later if any advancement is due. The earning of increment will be counted as an advancement of scale. This restriction will not be applicable to existing Group-D employees."

[24] The appellants have not pleaded about the category of employments (viz; Junior Physical Instructor, Physical Instructor Senior Physical Instructor) they belonged to. It is evident from the record that they have only ventilated about their pay scale. The appellants could not make out a clear case as to when they were granted 1st CAS and under which scale, that would have been indicative to the next higher scales vis-a-vis their entitlements to the 2nd and 3rd ACPs. Since the appellants have not ventilated their case properly, we find force in the argument of Mr. M. Debarrama, learned Addl.GA for the respondents and the impugned judgment dated 04.02.2021 passed by the learned Single Judge needs no interference. Accordingly, the instant appeal stands dismissed.

[25] In view of the above, the instant writ petition stands dismissed. As a sequel, stay, if any, stands vacated. Pending application(s), if any also stands closed.

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