

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 142 OF 2023

- 1. Pranab Kumar Baishya**, son of Sri Mohan Lal Baishya, resident of Village Chinaihani, P.O. & P.S. Airport Agartala, District-West Tripura, Pin-799009, Age-46 years.
- 2. Kaushik Majumder**, son of Sri Bimalendu Bikash Majumder, resident of Village-Dhaleswar, Road No.16, P.O. Dhaleswar, P.S.-East Agartala, District-West Tripura, Pin-799007, Age-43 years.

.....**Petitioners.**

Vrs.

- 1. The State of Tripura**, represented by the Commissioner & Secretary to the Department of Industries & Commerce, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division-Sadar, District-West Tripura.
- 2. The Director of Industries & Commerce**, Government of Tripura, Khejurbagan, Agartala, District-West Tripura, Pin-799006.
- 3. The Commissioner & Secretary**, Finance Department, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division-Sadar, District-West Tripura.
- 4. The Commissioner & Secretary**, Department of Higher Education, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division-Sadar, District-West Tripura.
- 5. The Director of Higher Education**, Government of Tripura, Shiksha Bhavan, Office Lane, Agartala, District-West Tripura, Pin-799001.

..... **Respondents.**

For the petitioner (s) : Mr. P. Roy Barman, Senior Advocate.
Mr. Samarjit Bhattacharjee, Advocate.
Mr. K. Nath, Advocate.
Ms. A. Debbarma, Advocate.
Mr. K. Chakraborty, Advocate.

For the respondent (s) : Mr. D. Sarma, Addl. G.A.

Date of hearing and : **28.06.2024**
date of delivery of
judgment and order

Whether fit for : No
reporting

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order(Oral)

By means of filing the instant writ petition, the petitioners have prayed for following reliefs:

“(i) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them, to revoke/rescind the impugned Order dated 13.10.2015 (Annexure-10 supra), insofar as it relates to grant of regular pay scales to the Petitioners, after completion of 8 years of service on fixed pay basis, under the Government of Tripura;

(ii) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them, to count the past services, as rendered by the Petitioners in the former post of Mechanic (Electronics), under the Directorate of Higher Education, Government of Tripura, on fixed pay basis (w.e.f. 13.12.2007 to 24.05.2010), for the purpose of granting regular pay scales in their favour, in terms of the Finance Department's Memorandum dated 16.10.2007 (Annexure-11 supra), and thereupon, to grant them the regular pay scales, with effect from the date of their respective completion of 5 years of service on fixed pay basis (i.e. w.e.f. 13.12.2012) along with all consequential benefits, including arrears thereof;

(iii) Call for the records, appertaining to this Writ Petition;

(iv) After hearing the parties, be pleased to make the Rule absolute in terms of (i) & (ii) above;

(v) Costs of an incidental to this proceeding;

(vi) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper.”

2. The facts leading to the filing of this writ petition are that the petitioners initially joined in service on 13.12.2007 as Mechanic (Electronics) under the Directorate of Higher Education, Government of Tripura, on fixed pay basis. Subsequently, the petitioners having noticed an advertisement issued by the Directorate of Industries & Commerce, Government of Tripura inviting aspirants for filling up some vacant posts of Senior Instructor (Electronics) & Senior Instructor (IT & ESM) applied their candidature through proper channel for the said posts. In furtherance thereof, they obtained 'No Objection' from the Director of Higher Education and had appeared in the selection test for the posts of Senior Instructor under the Directorate of

Industries & Commerce. The petitioners got successful in the selection test and subsequently, they were issued offer of appointment to the posts of Senior Instructor (Electronics) and Senior Instructor (IT & ESM) respectively. Thereafter, on acceptance of their offers of appointment, the Director of Industries & Commerce, Government of Tripura on 10.05.2010 issued Orders appointing the petitioners to the said respective posts on fixed pay basis.

2.1 Pursuant to the issuance of the said orders of appointment, the petitioners had tendered their 'technical resignation' on 13.05.2010 to the Director of Higher Education requesting to permit them to join their new assignments. Accordingly, their 'technical resignation' was allowed and on being released from the Department of Higher Education, they had joined on 24.05.2010 as Senior Instructors under the Directorate of Industries & Commerce, Government of Tripura on fixed pay basis.

2.2 It is the plea of the petitioners that the period of service they rendered under the previous employer has to be taken into consideration while counting the total period of 5 years' of service on fixed pay basis.

3. It is the grievance of the petitioners that they were not granted regular pay scales despite completion of 5 years' of service on fixed pay basis on 13.12.2012. According to the petitioners, the respondents most illegally and arbitrarily provided them regular pay scales w.e.f. 24.05.2015 [***Annexure-10*** to the writ petition] e.i. after 8 years' of service on fixed pay basis. The petitioners submitted their representations praying for granting them regular pay scales w.e.f. 13.12.2012 i.e. after completion of five years' of service from their initial appointment under the Department of Higher Education, but, they did not get any redress from the respondents. Hence, this writ petition.

4. I have heard Mr. Koomar Chakraborty, learned counsel appearing for the petitioners and Mr. D. Sarma, learned Addl. G.A. appearing for the State-respondents.

5. Mr. Chakraborty, learned counsel appearing for the petitioners at the very outset has candidly submitted that the petitioners were entitled to get regular pay scales from the date of completion of total five years' of service on fixed pay basis i.e. w.e.f. 13.12.2012, but, most illegally and arbitrarily the petitioners have been deprived of the said benefit. Mr. Chakraborty, learned counsel referring to the Memorandum dated 16.10.2007 [*Annexure-11* to the writ petition] pointed out that from the said Memorandum, it manifestly reveals that after opening the service book of a fixed pay employee and on completion of 5 years' of service from the date of his joining, he shall be provided with the regular pay scales. It is pertinently reiterated by Mr. Chakraborty, learned counsel that the prime employer of the petitioners is the Government of Tripura under whom they had initially joined in service on 13.12.2007 i.e. the department of Higher Education on fixed pay basis and subsequently, they had joined the department of Industries & Commerce under the same employer i.e. the Government of Tripura and their respective service books were transferred to the latter department.

5.1 Mr. Chakraborty, learned counsel relied upon a common judgment passed by a co-ordinate bench of this Court in *WP(C) No.234 of 2020 [Tarendra Reang & Anr. Vs. The State of Tripura & Ors.]* along with other connected writ petitions whereby the learned Single Judge (A. Kureshi, the then CJ) had allowed the writ petitions directing the State-respondents to grant the benefit of regular pay scales to the writ petitioners after counting their past service on fixed pay basis.

5.2 With the above submissions, Mr. Chakraborty, learned counsel has urged before this Court to direct the respondents to provide regular pay scales to the petitioners with effect from the date of their completion of 5 years' of service on fixed pay basis i.e. 13.12.2012 along with all other consequential benefits including arrears thereof in the same terms of ***Tarendra Reang*** (supra).

6. In rebuttal, Mr. Sarma, learned Addl. G.A. appearing for the respondents in reference to the contention made at Para 12 of the counter affidavit filed by the respondents has submitted that the matter was referred to the Finance Department, Govt. of Tripura and accordingly, the Finance Department under Order No. 415/Fin(G)/13, dated 26.06.2013 has opined that '*Finance Department concurs with the proposal of the department for counting of past fixed pay services rendered for the purpose of pension and pensionary benefits, however, fixed pay period rendered by the incumbent in the previous post should not be counted for computing completion of required 5(five) years services in the present fixed pay post for the purpose of regularization.*' Thus, Mr. Sarma, learned Addl. G.A. contended that there was no illegality and arbitrariness from the side of the respondents for not granting regular pay scales to the petitioners counting their past service after completion of five years on fixed pay basis.

7. Considering the facts and submissions of learned counsel appearing on behalf of the parties to the *lis*, in my opinion, the only issue lies in this writ petition is that the petitioners are entitled to get regular pay scales after completion of 5 years' of service on fixed pay basis. It is clear and cogent that they had served in their earlier department i.e. the department of

Higher Education for a certain period on fixed pay basis and later they had joined the department of Industries & Commerce and have been continuing their service. It is pertinent to mention that after total 8 years' of their service under these two departments of the State Government, the petitioners were provided with the regular pay scales most illegally and arbitrarily.

8. Here, it is seen that the petitioners had discharged their duties in the department of Higher Education under the Government of Tripura to the post of Mechanic (Electronics) and later, on being noticed the advertisement published from the department of Industries & Commerce, Government of Tripura they applied through proper channel for the post of Senior Instructor (Electronics) & Senior Instructor (IT & ESM) respectively. After being selected for the said posts, they submitted 'technical resignations' from their previous posts which were accepted and consequently, they were relieved from their previous employment so as to enable them to join in their new assignments. Upto this level, all the Government actions were rightly done. It has come to fore that they had been appointed further on fixed pay basis in the later department in the year 2010 and were provided them the regular pay scales in the year 2015 without counting previous service period. In my opinion, it seems to be very unjust and unreasonable action on the part of the respondents.

9. In this aspect, I have gone through the judgment passed by a coordinate bench of this court in *Tarendra Reang* (supra) along with other connected writ petitions which has been relied upon by Mr. Chakraborty, learned counsel appearing for the petitioners wherein the coordinate bench had vividly discussed the issue at Para 3, 6 & 7 which is reproduced here-in-below for just and proper decision of the instant writ petition.

*“[3] Before we address the central controversy, a peripheral issue arising in some of the petitions may first be disposed of. We have noticed that there are some cases in which Teachers who were appointed in the year 2012 in fixed salary basis were not granted regular pay scale even after completion of 5 years of service. The stand of the Government was that these Science Teachers were not engaged against regular vacancies and that, therefore, they cannot get the benefit of the Government notifications providing for grant of regular pay scale to Group C and D employees after completion of 5 years of service in fixed salary. This issue was decided by this Court in case of **Snehangshu Das and others Vs. State of Tripura and Ors.** in **WP(C) No.89/2020** and connected petitions in a judgment dated 18th December, 2020. Following observations may be noted:*

“24. There is yet another angle to the whole issue. All the petitioners are discharging duties as teachers in primary and secondary divisions in Government schools where the very foundation of the students who would form the future generation of the society is laid. For over 8 years the Government refuses to remunerate these teachers at fair wages which are paid to other similarly situated teachers with same qualifications and nature of work. If the only argument of the Government is that they cannot stake their claims over regular pay scales because there are no sanctioned posts, there has to be something seriously wrong with the Government policy formation. As many as 1450 school teachers cannot be kept against unsanctioned posts. The fact that the work exists for them and precisely that is why they have been engaged is beyond dispute. When the work is of such perennial nature and the work is of such importance, can the Government argue that because the posts are not sanctioned the petitioners will not get fair wages. Obviously the answer has to be in the negative. Continuing the petitioners on fixed salary in perpetuity and at the same time expecting full dedication, efficiency and sincerity in their discharge of the duties would be a dichotomy.

25. In the result, all the petitions are allowed by providing that the petitioners will be brought over to regular pay scale upon completion of 5 years of service from initial engagement. This shall be with all consequential benefits including past arrears of wages and pay fixations. All the benefits of Government notifications issued from time to time concerning their past services will also be available to the petitioners. Entire exercise shall be completed within a period of six months from today”

In all cases where Assistant Science Teachers after their engagements in the year 2012 on fixed salary basis have not been granted regular scale upon completion of 5 years of service, would receive the benefit as held in case of Snehangshu Das(supra). They would have to be brought over to regular scale upon completion of 5 years of service with all consequential benefits.

[6] The formula of engaging employees in Group C and D posts for initial period of 5 years on fixed salary is a device adopted by the State Government, principally by way of cost cutting exercise. From time to time, resolutions have been passed under which by keeping the regular posts in abeyance for a period of 5 years temporary engagements are made on fixed salary basis. This is, however, always preceded by regular selection process and is done against regular posts which are vacant. These resolutions also provide that upon

completion of continuous satisfactory 5 years of service, the person so engaged on fixed salary basis will be brought to regular scales of pay. Benefit of the past service is also recognized for the purpose of pension and other benefits. In short thus, the formula of engaging Group C and D staff on fixed salary basis is merely advice to enable the Government to reduce its salary burden for a temporary period. All these petitioners thus having been initially engaged in fixed salary regime, were brought over to regular scale or ought to have been brought over to regular scale as held by this Court in case of Snehangshu Das (supra) and which declaration has already been made in this judgment earlier.

[7] In this context, the question would be can these petitioners now be asked to be placed at the very bottom in their new assignments by asking them to work for 5 years on fixed salary before they would be brought over to regular pay scales and in the process, their past service of more than 5 years would be wiped out for all purposes? This question has to be examined from the context of relevant rules and regulations. FR.22(1) provides for regulation of the pay of a Government servant appointed to a post on time scale of pay and envisages different situations where a Government servant holding one post on substantive or temporary basis is promoted or appointed in a substantive, temporary or officiating capacity on some other post. It primarily envisages protection of past pay on new engagement. It is not necessary to take detail stock of this rule, except for referring to a judgment of this Court in case of Sri Khokan Debnath Vs. State of Tripura and Ors. reported in (2018) 1 TLR 175 in which the learned Single Judge held and observed that FR.22(1)(a)(1) is not confined to regulation of pay scale of a Government servant on promotion. The same would apply also in case of his appointment on a post different from one he was previously holding in the Government.

10. I may gainfully refer here again Para 17 & 18 of the judgment passed in **Tarendra Reang** (supra) which read as follows:

“[17] The objection of the Government that the petitioners accepted their appointment with full knowledge and, therefore, they are stopped from raising their grievances is possible of the summery disposal. Neither the recruitment rules nor the advertisement nor the offer of appointment can override the service rules, regulations and statutory provisions. Even if the advertisement provided that an appointee shall be placed under fixed pay for a period of 5 years, never clarified that even if the rules and regulations so provide, the past service of a job aspirant who has been a Government servant already for over 5 years would be wiped out, nor could it have been so prescribed.

[18] Under the circumstances, all the petitions are allowed. In cases where the petitioners were already enjoying pay fixations in regular scales, their entire past service shall be protected for the purpose of pay and allowances including leave encashment and post-retiral benefits as per their appointments in new posts. Where the petitioners have not been granted regular pay scales even after completion of 5 years of service, they would be first brought over to regular pay scale from due dates. Upon their fresh engagements as Teachers, their past service similarly shall be protected.....”

11. Having gone through the above propositions as delineated by the coordinate bench of this Court, I find that the facts of the case of ***Tarendra Reang*** (supra) are squarely applicable to the facts of the instant case. Since the factual aspects of the present writ petition are similar and identical to the subject matter of the case of ***Tarendra Reang*** (supra), this writ petition is also, therefore, allowed and disposed of in the same terms.

12. Accordingly, the respondent no.2 is directed to provide the regular pay scales to the petitioners upon completion of 5 years of service from their initial appointment under the previous department (Directorate of Higher Education, Govt. of Tripura) on fixed pay basis i.e. w.e.f. 13.12.2012 along with all other consequential benefits including arrears thereof within a period of 6(six) months from today.

JUDGE

SANJAY GHOSH Digitally signed by SANJAY GHOSH
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