

**HIGH COURT OF TRIPURA
AGARTALA**

WA NO.207 OF 2021

The State of Tripura and ors.
Vs.
Sri Kamanashis Das and ors.

Present:

For the Appellant(s) : Mr. D. Bhattacharjee, G.A.
Mr. K. De, Addl.G.A.
Mr. P. Saha, Advocate.
For the Respondent(s) : Mr. A. Bhowmik, Advocate.
Mr. S. Dey, Advocate.

WP(C) NO.604 OF 2021

Shri Keshab Chandra Das and ors.
Vs.
The State of Tripura and ors.

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

06.12.2022

Order

Chief Justice(Acting)

This two present writ appeal and writ petition are heard and taken up together for disposal since the similar question of law and facts are involved. For the sake of convenience, W.A No.207 of 2021 is taken up as the lead case.

The brief fact of this instant appeal is that all the respondents were appointed as Post Graduate Teachers on different dates in Government Schools. The respondents were appointed between 2005 to 2007. As per the Government policy, they were granted fixed pay for the initial 5(five) years of their service by

keeping the regular post in abeyance. Upon completion of the period of 5(five) years, they were brought over to the regular pay scales. The respondents sought the benefit of one advance increment as per Rules 13(1)(ii) of the Tripura State Civil Services(Revised Pay) Rules, 2009. Therefore, the respondents as petitioners approached this Court under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents-appellants herein to grant the petitioner-respondents one increment as a training incentive under Rule 13(ii) of the Tripura State Civil Services memorandum dated 6th July 2011, whereby it has been provided that the fixed pay employees are not entitled to increment under the Rules of 2009. The petitioner-respondents further challenged the memorandum dated 16.10.2007 issued by the Finance Department, Government of Tripura whereby it has been provided that all Group-C and Group-D employees are to be kept on fixed pay for a period of 5(five) years. The petitioner-respondents further sought all financial benefits including arrears of financial benefit pursuance to the grant of the aforesaid reliefs to the petitioner-respondents. Hence the petitioner-respondents approached the learned Single Judge of this Court by filing the writ petition. The learned Single Judge after hearing the matter dismissed the same by judgment and order dated 13.02.2020.

Thereafter, the petitioner-respondents filed a review petition, which after hearing, learned Single Judge vide order dated 27.08.2020 allowed the same and recalled and revived the order passed in the writ petition. On 19.03.2021, learned Single Bench of

this Court interfered with the writ petition and allowed the prayed of the petitioner-respondents herein. The operative portion of this said Judgment and order is reproduced herein-under:-

"[14] Sum total of this discussion is that in my view, the provision for grant of advance increment by way of training incentive to those teachers who entered the service with higher qualifications would continue to operate even after 1st January 2009, however, those who obtained such training after 1st January, 2009 will only be entitled to lump sum payment. The case of the petitioners would fall under clause (ii) since they had obtained B.Ed degrees long before 1st January, 2009. They possessed such degrees when they joined the service. They were brought over under ROP 2009 upon completion of 5 years period from respective dates of initial engagement. They would, therefore, be entitled to the benefit under Rule 13(1)(ii) of ROP 2009, notwithstanding the fact that the event of being brought over Rule 13(1)(ii) of ROP 2009 happened after 1st January, 2009 in each of their cases.

[15] Two issues need to be sorted out before final directions can be issued. Firstly, in facts of the case, the principle of estoppel cannot be applied since it is stated by the petitioner that only 2 out of the 5 petitioners have received even the lump sum payment and in their cases also the same was granted unilaterally by the Government. Second is the question of delay and laches. It is true that these petitions were filed long after the rights of the petitioners to claim increment arose. However, being a matter of correct pay fixation, would have recurring effect. Subject to limiting their past rights, their prayer for grant of advance increment cannot be rejected only on this ground.

[16] In the result, it is provided that all the petitioners would be entitled to one advance increment in terms of Rule 13(1)(ii) of ROP 2009 from the respective dates when they were brought over to regular pay scales. This pay fixation would, however, be for notional purpose till the date of filing of the petition after which they would be entitled to arrears of salary. These directions shall be carried out within a period of 4(four) months from today."

Hence this instant appeal.

Mr. D. Bhattacharjee, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the appellants submitted that learned Single Judge should not have allowed the writ petition on merits. The learned Single Judge misinterpreted the rule because in the present case, though the petitioner-respondents acquired B.Ed., degree before their entry into service, but, till the cut-of-date i.e. 01.01.2009 they were not regular employees. The Rule-13(1)(v) is

applicable only for those who have completed training on or after 01.01.2009 but in the present case, the requisite qualification was obtained much earlier though they were not on regular pay scale as per provision of Rule-2(d) of ROP, 2017. Stating thus learned G.A. prayed to allow this appeal.

Mr. A. Bhowmik, learned counsel assisted by Mr. S. Dey, learned counsel submitted that the judgment and order as passed on 19.03.2021 is just and proper and needs no interference.

We have heard both sides and perused the judgment and order of the learned Single Judge passed in WP(C) No.703 of 2019. In the impugned writ petition, the learned Single Judge has dealt with all the issues and this Court finds that the order of the learned Single Judge needs no interference.

Accordingly, this instant Writ Appeal is dismissed. The judgment and order passed by the learned Single Judge in WP(C) No.703 of 2019 is upheld. Consequently, in pursuance of the order passed in this writ appeal, the WP(C) No.604 of 2021 also stands dismissed.

In the sequel, pending application(s), if any, also stands closed.

JUDGE

CHIEF JUSTICE (ACTING)

suhanjit