

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 107 of 2023

Dr. Rajib Karmakar

---Petitioner(s)

Versus

The State of Tripura And 4 Ors

---Respondent(s)

For Petitioner(s)	: Mr. A. Pal, Advocate.
For Respondent(s)	: Mr. D. Sharma, Addl. GA.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

ORDER

03.08.2023

Heard Mr. A. Pal, learned counsel appearing for the petitioner as well as Mr. D. Dharma, learned Addl.GA appearing for the state-respondent.

This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking the following reliefs:

- (i) Issue Rule calling upon the respondents and each one of them, to show cause as to why a Writ of certiorari and/or in the nature thereof, shall not be issued, directing the respondents to transmit the records, relevant to the subject matter of this petition, for rendering conscionable justice to the petitioner and thereafter, quash the memo dated 19.12.2022 bearing reference No.F.13(1324)-HFW/2012/(Part File);*
- (ii) Issue a 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, directing/mandating them, to grant the benefit of ACP-I to the humble petitioner with effect from 19.10.2016, as envisaged under the Tripura State Civil Service (RP) (15th) Amendment Rules, 2016 and in tune with the Memorandum dated 22.04.2017 and thereafter direct the respondents to make correct and proper fixation of the pay of the petitioner;*
- (iii) In the interim, an order in terms of ii above;*
- (iv) After hearing the parties, be pleased to make the Rule Absolute in terms of i.ii.iii above.*
- (v) Any other relief(s) as to this High Court may deem fit and proper.*

It is the case of petitioner that he was appointed to Grade-IV of Tripura Health Service on 01.10.2012 and joined the said service on 19.10.2012. Therefore, he completed four years of continuous service on 19.10.2016 and as per Memorandum dated 22.04.2017, the petitioner is entitled to be given the ACP-I with effect from 19.10.2016 as Tripura Health service is a Cadre Service. The decision of the Finance Department

as communicated by the Director of Health Services vide impugned Memo dated 19.12.2022 in rejecting the prayer for awarding ACP-I to the petitioner was illegal and unlawful for the reason that it is a settled law that ad-hoc service which is regularized without any break is counted for the purpose of grant of increment and pension. It is further submitted that the respondents ought to have taken a positive decision and accorded benefits of ACP-I in favour of the petitioner in response to his representation.

Mr. A. Pal, learned counsel appearing for the petitioner, in course of his submission, has submitted before this court that it is trite that in administrative law when statutory obligations are cast upon statutory authorities such authorities must act in strict conformity with the statutory prescriptions and discharge their functions thereat by granting benefits as admissible under the statutory prescriptions. Inaction and or non-action on the part of statutory authorities and/or non-discharge of statutory obligations render such actions liable to be interfered with the mandamus jurisdiction.

It is further submitted that the inaction on the part of the statutory authority and non-performance of the statutory obligation, has entailed adverse civil consequences to the petitioner moreso, he is suffering monetary losses as he is receiving less salary.

Mr. D. Sharma, learned Addl. GA appearing for the state-respondent has submitted that the petitioner joined in Tripura Health Services (THS) under the Health & Family Welfare Department on 19.10.2012 on Ad-hoc basis and completed 4(four) years service on 18.10.2016. His service was also regularized w.e.f. 11.01.2016. Subsequently, the proposal for awarding 1st financial up-gradation in term of ACP-I on completion of 4(four) years service in respect of the petitioner was processed and the Finance Department vide their opinion stated that

in the instant case, service of the petitioner has been regularized with effect from 11.01.2016. Benefits of RoP rules are not applicable for the period of ad-hoc service.

In view of the above submission made the counsel for the parties and also having gone through the records, this appears to this court that the impugned order dated 19.12.2022 is made without any application of mind and the same appears to be an unreasoned one. This court has no hesitation to hold that the present case is fit for remitting back to the respondents to pass a speaking order indicating the eligibility of the petitioner for his claim to be considered. Accordingly, it is ordered. The respondents are therefore directed to deal with the case afresh and pass a speaking order. While passing such order, reliance shall be placed on the RoP Rules that are applicable with the the case of the petitioner. It is needless to mention here that the respondents shall also make it clear whether the RoP Rules of 2017 or 2022 can be made applicable with retrospective effect to the case of the petitioner where his claim is made for the period from 19.10.2012 to 19.10.2016. The respondents are further directed to take the decision as expeditiously as possible, preferably within a period of two months from the date of receipt of the copy of this order.

With the above observation and direction, this present writ petition stands disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

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