HIGH COURT OF TRIPURA
AGARTALA
WP(C) 175/2022

Sri Swapan Majumder & another .....**Petitioners**

Versus

The State of Tripura and 2 ors. .....**Respondents**

For Petitioner(s)	:	Mr. A. Bhaumik, Advocate
For Respondent(s)	:	Mr. D Sarma, Addl. GA

HON'BLE MR. JUSTICE ARINDAM LODH

Order

13/01/2023

Heard Mr. A. Bhaumik, learned counsel appearing for the petitioners. Also heard Mr. D. Sarma, learned Additional GA appearing for the respondents.

2. By means of filing this writ petition, the petitioners have claimed for the following reliefs:

> *"**i)** Issue notice upon the Respondents.*
> ***ii)** Call for the Records.*
> ***iii)** Issue rule calling upon the respondents to show cause as to why the Petitioners shall not be given the benefit of one increment as per Rule 13(1)(ii) of the Tripura States Civil Services (Revised Pay) Rules, 2009.*
>
> ***AND***
>
> *Issue Rule calling upon the Respondents to show cause as to why the memorandum dated 6th July, 2011 issued by the Finance Department, Government of Tripura shall not be set aside and quashed.*
>
> ***AND***
>
> *Issue Rule calling upon the Respondents to show cause as to why the Petitioners shall not be granted all financial benefits as per the Judgment and order dated 19th March, 2021 passed in W.P(C) No.703/2019 by this Hon'ble High Court.*
> ***iv)** And after hearing the parties, be pleased to make the rule absolute.*
>
> ***AND/OR***
>
> *Pass any other order/orders as deemed fit and proper by this Hon'ble Court."*

3. Facts of the petitioners' case, briefly, are that the petitioners herein were appointed as teachers either as Graduate or Post Graduate under the respondents on different dates. They were appointed initially on fixed pay

basis for 5(five) years as per Government policy and after completion of their continuous 5(five) years of service, they were regularized in the said post. It is the main contention of the petitioners that they had completed their B. Ed degree prior to their entry into service and accordingly, they are entitled to one advance increment as per Rule 13(1)(ii) of Tripura State Civil Services (Revised Pay) Rules, 2009 (for short, "ROP 2009").

4. Mr. Bhaumik, learned counsel for the petitioners has submitted that similar issue had already been decided by this Court in **WP(C) No.703 of 2019** titled as ***Sri Kamanashis Das & 4 Ors vs. The State of Tripura & 3 Ors***, vide judgment and order dated 19th March, 2021, wherein, the learned Single Judge held that the writ petitioners of that writ petition would fall under clause (ii) of Rule 13(1) of the Revised Pay Rules of 2009 as the petitioners possessed the B.Ed. Degree before joining their services either as Graduate or Post Graduate teachers.

5. Learned counsel appearing for the respondents did not oppose the submission of Mr. Bhaumik, learned counsel for the petitioners. The relevant portion of the said judgment passed in ***WP(C) No.703 of 2019*** may be reproduced here-in-below:

> ***"[11] Insofar as the stand of the Government that as on 1st January 2006 the petitioners were not covered by ROP 2009 is concerned, I find no difficulty in accepting it. Rule 2 of ROP 2009 pertains to its applicability. Sub-rule (1) of Rule 2 provides that unless otherwise provided under the rules, the said rules shall apply to persons appointed in regular scales of pay to services and posts in connection with the affairs of the State of Tripura. Sub-rule (2) of Rule 2 provides that unlessspecifically extended under the express order of the Government, the said rules shall not apply to various category of persons mentioned in clauses (a) to (h) of the said sub-rule. Clause (d) pertains to persons paid on monthly fixed pay basis including those paid only on piece rate basis. As on 1st January 2006 all the petitioners were engaged on fixed pay basis and thus, by virtue of clause (d) of sub-rule (2) of ROP 2009 the said rules did not apply to them. Considering the initial date of engagement of these petitioners, they had not completed 5 years till 1st January, 2009 and thus, as on 1st January, 2009 also these petitioners were not covered by ROP 2009. It is in this context, question of applicability of clause (ii) or clause (v) of sub-rule (1) of Rule 13 has arisen. All these petitioners having completed 5 years of service on fixed salary after 1st January, 2009 and accordingly, having been brought over to regular scales after the said date, can claim advance increment only if even post 1st January, 2009 clause (ii) of sub-rule (1) of Rule 13 continued to apply. On the other hand, if the Government's interpretation is correct and post 1st January, 2009 the entire scheme including one envisaged in clause (ii) was replaced, the petitioners can only claim lump sum payment and not advance increment.***

[12] One may recall, clause (ii) of Rule 13(1) introduced the concept of granting one advance increment to those teachers who entered the service with higher qualification of B.Ed. Such increment would be available even to existing employees who may not have got such benefit in the past. The date from which the benefit would be available was 1st January, 2006(which obviously will cover existing teachers) or from the date of coming over to the rules or from the date of appointment of the teacher whichever is later. In other words, even if a teacher is appointed after 1st January, 2006 but possessed qualification of B.Ed at the time of the entry in service, he would be entitled to advance increment in terms of the said clause from their date of appointment. The third situation of being brought over to ROP 2009 can have reference only for those who may have been appointed after 1st January, 2006 but before 1st January, 2009. Thus, the third category of cases where the effective date of grant of the benefit which is the date of appointment, must have a reference to those who are appointed after 1st January, 2009 since, in their cases, there will be no question of a choice of being brought over to the new rules. To my mind, thus there is a clear indication in this rule itself that the same will continue to have effect even after 1st January, 2009.

[13] Let us now juxtapose this position with clause (v) of sub-rule (1) of Rule 13. This clause essentially provides that in respect of the categories mentioned in the said clause of employees existing system of providing training incentive in the form of one increment would be replaced by a lump sum incentive of different sizes depending on the nature of qualification and duration of the training. The note below clause (v) provides that the system of providing lump sum incentive will take effect form 1st January, 2009 for all cases who have completed training on or after 1st January, 2009. If, as is argued by the Government, clause (v) was meant to replace all provisions for training incentives including one provided in clause (ii), the note below clause (v) was redundant. This note includes only those cases where training has been obtained after 1st January, 2009. To elaborate, if the main body of clause (v) were to include every case where the claim for advance increment arises after 1st January 2009, the clarification contained in the note was wholly redundant since it provides that the system of providing lump sum incentive will take effect from 1st January, 2009 for those persons who complete training on or after 1st January, 2009.

[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.***
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> ***Petition is disposed of accordingly. Pending application(s), if any, also stands disposed of."***

6. Since the factual aspects and law involved in the present writ petition is similar and identical to the subject matter of the case of ***Kamanashis Das (supra),*** this Court is of the view that the present writ petition may be allowed and disposed of in the same terms.

7. Accordingly, the respondents are directed to provide one advance increment to the petitioners of the present writ petition in terms of Rule 13(1)(ii) of ROP 2009 from the respective dates when they were regularized in their service. However, the fixation of pay of the petitioners would be made notionally till the date of filing of this petition after which they would be entitled to arrears of salary. The respondents are also directed to complete the entire exercise within a period of 4(four) months from today.

8. With the aforesaid observations and directions, the instant writ petition stands allowed and disposed of.

JUDGE

Saikat