

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) 226/2022**

1. Smt. Sharmila Talapatra,

W/O- Sri Pabitra Baidya, R/O- Indranagar, Chowdhury Tilla Opposite Kabar Khola, P.O:- Indranagar, P.S- New Capital Complex, District- West Tripura, Pin- 799006, Age- 45 years.

2. Smt. Jayasree Datta,

W/O- Nilotpall Nandi Chaudhuri, R/O- Ward No.25, Badharghat, Beside Milan Chakra Club, P.O.- A.D. nagar, P.S:- A.D. Nagar, District- West Tripura, Pin- 799003, Age- 42 years.

.....Petitioners

-VERSUS-

1. The State of Tripura,

Represented by its Principal Secretary, School Education Department, Government of Tripura, P.O.- Kunjaban, P.S- New Capital Complex, District- West Tripura, Pin- 799006

2. The Director of Secondary Education,

Directorate of Secondary Education, School Education Department, Government of Tripura, P.O- Agartala, P.S- West Agartala, District- West Tripura, Pin- 799001.

3. The Principal Secretary,

Finance Department, Government of Tripura, P.O.- Kunjaban, P.S. – New Capital Complex, District- West Tripura, Pin- 799006.

4. The Managing Committee, Bishalgarh Class XII School,

Represented by its Secretary, P.O+P.S- Bishalgarh, Dist- Sepahijala, Pin-799102.

.....Respondents

For the Petitioner(s)	:	Mr. S. Dey, Advocate Mr. A. Saha, Advocate
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For the Respondent(s)	:	Mr. S. S. Dey, Advocate General Mr. K. De, Addl. G.A.
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Date of hearing & delivery of judgment & order	:	11.08.2023
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Whether fit for reporting	:	No
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**HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)**

The facts of the case in brief are that the petitioners are serving as Post Graduate Teachers under the respondents. They were initially appointed 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 01.01.2009 and accordingly, they are entitled to one advance increment as per Rule 13(1)(v) of Tripura State Civil Services (Revised Pay) Rules, 2009 (for short, “ROP 2009”). In addition, the petitioner has urged this court for setting aside the memorandum dated 06.07.2011 issued by the Finance Department (Annexure-9 to the writ petition). By the said memorandum it has been clarified that since as per Rule (2(d) of TSCS (RP) Rules, 2009 fixed pay employees do not come within the domain of the Rules, they are not entitled to the training incentive during the fixed pay period. However, the employees under reference shall be entitled to get training incentive in the form of lump-sum grant with effect from 01.01.2009 or from the date he/she would be brought to regular appointment in service, if not got the same as per earlier guidelines.

2. I have heard Mr. S. Dey, learned counsel along with Mr. A. Saha, learned counsel appearing for the petitioners. Also heard Mr. S. S. Dey, learned Advocate General assisted by Mr. K. De, learned Addl. G.A. appearing for the respondents-State.

3. At the time of hearing, Mr. S. Dey, learned counsel appearing for the petitioners has submitted that this petition is squarely covered by the judgment of this Court dated 23.11.2022 passed in **WP(C) 602/2021** titled as ***Sri Sanjan Das Vs. The State of Tripura and 2 Ors.*** and other connected matters.

4. Learned Advocate General appearing for the State-respondents did not oppose the submission of Mr. De, learned counsel for the petitioners.

5. I have gone through the aforesaid judgment passed by this Court in *Sri Sanjan Das* (*supra*). The relevant portion of the judgment is reproduced here-in-below for convenience:-

“02. The petitioner who was appointed as the Post Graduate Teacher under the Education [School] Department on 01.08.2007 on fixed pay basis keeping his regular scale of pay in abeyance for five years has approached this court agitating against denial of granting the advance increment as per Rule 13(1)(v) of the Tripura State Civil Services (Revised Pay) Rules, 2009, even though he had completed his B.Ed. degree prior to 01.01.2009. To be precise, the petitioner was awarded the B.Ed. degree by Tripura University on 20.09.2007 [see Annexure-2 to the writ petition]. The petitioner has, in these perspective fact, urged this court for directing the respondents to release the said advance increment in his favour and refix his pay in terms of the Rule 13(1)(v) of Tripura State Civil Services (Revised Pay) Rules, 2009. In addition, the petitioner has urged this court for setting aside the memorandum dated 06.07.2011 issued by the Finance Department [Annexure-6 to the writ petition]. By the said memorandum it has been clarified that since as per Rule-2(d) of TSCS(RP) Rules, 2009 fixed pay employees do not come within the domain of the Rules, they are not entitled to the of training incentive during the fixed pay period. However, the employees under reference shall be entitled to get training incentive in the form of lump-sum grant with effect from 01.01.2009 or from the date he/she would be brought to regular appointment in service, if not got the same as per earlier guidelines.

3. Mr. Bhowmik, learned counsel appearing for the petitioner has succinctly submitted that the clarification has been interfered by this court in ***Kamanashis Das and Ors. vs. The State of Tripura & Ors.*** [judgment dated 19.03.2021 delivered in WP(C)No.703 of 2019] where this court in the similar context, has observed under:

“..... 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.”

Mr. Bhowmik, learned counsel therefore has contended that the present controversy is squarely covered by that decision.

04. Mr. P. K. Dhar, learned senior G.A. has reiterated what has been provided by the memorandum dated 06.07.2011 [Annexure-6 to the writ petition] that as per Rule 2(d) of the ROP Rules, 2009, the person paid on a monthly fixed pay basis, cannot get the benefit of these Rules. As the

petitioner was admittedly on fixed pay before 01.01.2009, he cannot get any incentive. After 01.01.2009 he may be allowed the lump sum benefit in the manner as provided by the said memorandum dated 06.07.2011 [Annexure-6 to the writ petition].

05. *Having appreciated the rival contentions as raised by the counsel for the parties, it appears that two pertinent questions surfaces for consideration, being:*

(i) Whether the petitioner is entitled to get the training incentive when he was on fixed pay? and

(ii) Whether the petitioner is only entitled to get the lump sum incentive in terms of the said memorandum dated 06.07.2011?

06. *This court is in agreement with the submission of Mr. Bhowmik, learned counsel that this court in **Kamanasish Das** (supra) has settled the issue and as such this issue is no more res integra. Even though the petitioner was on fixed pay basis keeping his regular pay scale in abeyance, he will be entitled to the training incentive of one advance increment when he will be brought in the regular scale.*

07. *Mr. P. K. Dhar, learned Sr. G.A. has submitted that the decision of **Kamanasish Das** (supra) has been challenged in an inter-court appeal by the state and the said appeal is still pending and as such this court may not take any decision based on **Kamanasish Das** (supra). The petitioner is not a usual fixed pay employee on contract basis. The petitioner has been appointed against the regular post and his due pay and allowances had been kept in abeyance for five years in pursuance of a fiscal policy of the State Government. According to that policy, whenever the petitioner would complete five years of the fixed pay employment, he would get the regular pay scales and all other benefits. In another litigation, a question was raised before this court that whether the period of five years, when the employees were on fixed pay basis keeping their regular pay and allowances in abeyance, would be treated as a regular service or not, this court has answered in unequivocal words that five years will be the part of their regular service and as such, they are not the fixed pay employee of ordinary parlance. Now the question arises whether they would get the increment on their fixed pay. There cannot be any different opinion that increment cannot be determined or added to the fixed pay. But the said increment be released when the petitioner would get into the regular pay scale. In this case, the petitioner has been given his regular scale of pay by the memorandum dated 31.08.2012 [Annexure-3 to the writ petition] with effect from 01.08.2012, when he had completed 5 years of service with the fixed pay for the day he was appointed on fixed pay by keeping regular pay scale in abeyance i.e. 01.08.2007.*

08. *There is no dispute that the petitioner has obtained the B.Ed degree while in service. As such, the petitioner will be entitled to the benefit of the advance increment in terms of the Rule 13(1)(v) of ROP Rules, 2009. However, the benefit of that increment will be notional till the date of filing of the writ*

petition as the cause arose long back but the petitioner has waited till 31.08.2021 to approach this court. However, the petitioner got the cause of action as the deprivation is perennial. The petitioner will get benefits of that advance increment and consequential fixation of pay. For fixation of pay with effect from 01.09.2021, arrears as would accrue to the petitioner shall be paid within a period of three months from today by the respondents.

09. *Having observed thus, the clarification as given by the memorandum dated 06.07.2011 [Annexure-6 to the writ petition] is read down.*

The writ petition stands allowed to the extent as indicated above.”

6. Since the factual aspects of the present writ petition is similar and identical to the subject-matter of the case of ***Sri Sanjan Das*** (supra), this Court is of the view that the present writ petition may also be allowed and disposed of in the same terms as laid down in the case of ***Sri Sanjan Das*** (supra).

Accordingly, the instant writ petition is allowed and disposed in terms of the directions passed in ***Sri Sanjan Das*** (supra).

JUDGE

SAIKA
T KAR

Rohit

