

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.236 of 2022

Sri Sankarsan Majumder,
S/O Late Sukesh Bandhu Majumder,
Resident of Vill-Chinaihani
P.O. Agartala Airport, P.S. Airport
Dist:- West Tripura,
PIN-799009

....Petitioner(s)

Versus

1. The State of Tripura

Represented by the Principal Secretary,
Information Technology,
Government of Tripura,
New Secretariat Building,
P.O. & P.S. New Capital Complex,
Agartala, West Tripura.

2. The State of Tripura,

Represented by the Secretary to the
Government of Tripura,
Finance Department,
Agartala.

3. The Director,

Department of Information Technology,
I.T. Bhaban,
ITI Road, Indranagar,
P.O. Kunjaban, PIN-799006

....Respondent(s)

For the Petitioner(s)	:	Mr. B. Banerjee, Advocate
For the Respondent(s)	:	Mr. D. Bhattacharya, GA Mr. Soumyadeep Saha, Advocate

Date of hearing and delivery of judgment & order	:	10/04/2023
--	---	-------------------

Whether fit for reporting	:	Yes
---------------------------	---	------------

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment and Order (Oral)

By means of filing the present writ petition, the petitioner has prayed for following reliefs:

- “(i) Admit the petition of the petitioner;*
- (ii) Call for records from the custody of the Respondents;*
- (iii) A Writ in the nature of Certioari directing the Respondents and each of them to set aside, quash and/or cancel the Order No.F.2(6)/DIT/Estt/2009/976-80 dated 07.05.2005 and Order No.F2(6)/DIT/Estt/2000/924-29 Dated 13.04.2006 forthwith and in no time.*
- (iv) A Writ in the nature of Mandamus directing the Respondents to restore the regular pay scale of Rs.3300-7100 for the period w.e.f. 02.02.2005 to 01.02.2011 with all financial and service benefits.*
- (v) Pass such further order or orders, direction or directions as the Hon'ble Court may deem fit and proper having regards to the circumstances of the case;”*

2. Heard Mr. B. Banerjee, learned counsel appearing for the petitioner. Also heard Mr. D. Bhattacharya, learned GA assisted by Mr. Soumyadeep Saha, learned counsel appearing for respondents-State.

3. Briefly stated, the petitioner was first appointed to the post of Lower Division Clerk(LDC) under the respondents on contract basis for 2(two) years with certain conditions vide order dated 24th January, 2001(Annexure-1 to the writ petition). Thereafter, the Director, Information Technology, Govt. of Tripura issued an order dated 23rd/24th December, 2002 providing him pay scale of Rs.3,300-7,100/- prescribed

for regularly/permanently appointed LDCs and extended his contract service period for further 2(two) years from the date of completion of 2(two) years of service. Vide order dated 7th May, 2005, the service of the petitioner on contract basis was again extended for a further period of 1(one) year w.e.f 2nd February, 2005. Thereafter, under an order dated 13th April, 2006 issued by Director, Information Technology, Govt. of Tripura, the petitioner was again appointed to the post of LDC on **fixed pay** of Rs.2,345/- only per month w.e.f 2nd February, 2006 on certain terms and conditions. On completion of 5(five) years of service on fixed pay basis, the Director, Information Technology, Govt. of Tripura regularized his service and provided him regular scale of pay of PB-2 Rs.5,310-24,000/- with Grade Pay Rs.1,800/- along with other allowances as admissible under rules with effect from 02.02.2011 with D.N.I. 01.07.2012.

4. The petitioner submitted a representation on 6th June, 2015 raising his grievance about the fixation of his pay scale with effect from 02.02.2006 till 01.02.2011, that is the period for which he was appointed on fixed pay basis with a fixed remuneration, but, that representation was not responded to. Thereafter, the petitioner approached the permanent Lok Adalat through proper channel on 23.08.2021(Annexure-7 to the writ petition). The permanent Lok Adalat after hearing the parties disposed of the application directing the petitioner to approach the appropriate forum vide order dated 28.11.2021 in case no.164, 165 and 168 of 2021.

5. According to the petitioner, the direction passed by the Lok Adalat had given rise the cause of action to challenge the order dated 7th May, 2005(Annexure-3 to the writ petition) and 13th April, 2006(Annexure-4 to the writ petition).

6. On the aforesaid background facts, *firstly*, Mr. Banerjee, learned counsel would contend that though the petitioner was appointed on contract basis, but, his service was regularized when he was given the pay scale prescribed for the post of LDC vide order dated 23rd/24th December, 2002 by the Director, Information Technology. *Secondly*, learned counsel for the petitioner has challenged the extension of the contract period of service of the petitioner vide order dated 7th May, 2005 on the ground that once the petitioner was treated as regular employee his status and nature of employment cannot be altered, which is evident from the order dated 7th May, 2005. *Thirdly*, learned counsel appearing for the petitioner submits that the appointment of the petitioner on fixed pay basis at Rs.2,345/- vide order dated 13th April, 2006 is arbitrary and is liable to be set aside and quashed and he is entitled to regular pay scale w.e.f. 2nd February, 2005 to 1st February, 2011.

7. To resist the aforesaid submissions of learned counsel for the petitioner, Mr. Bhattacharya, learned GA has contended that the instant writ petition is absolutely barred by delay and laches. Learned GA has further contended that the petitioner was allowed the pay scale of LDC when he was under contractual service following the doctrine of equal pay for equal work. The service of the petitioner was regularized, but, put on fixed pay basis in conformity with the policy decision of the government that each and every new appointee would serve as fixed pay employee with fixed remuneration for first 5(five) years. It is further contended that this order of changing his nature of service on fixed pay basis has not been challenged by the petitioner within a reasonable period of time. He accepted the salary on fixed pay basis for almost 7(seven) years though regular pay scale was provided to him w.e.f. the date of

completion of 5(five) years i.e. w.e.f. 01.02.2011 as per the policy of the government. Mr. Bhattacharya, learned GA has further submitted that there was no illegality or arbitrariness in fixing the pay scale of the petitioner by the respondents.

8. I have considered the submission advanced by the learned counsel appearing for the parties. It is true that though the petitioner was initially engaged on contract basis in the post of LDC, but, he was allowed to enjoy minimum basic pay of LDC. Here, I find force in the submission of learned GA that regular pay of LDC was allowed to the petitioner following the doctrine of equal pay for equal work because he was performing his duties and responsibilities as that of a regular LDC under the respondents. Thereafter, his nature of service on contract basis had been changed to regular service and virtually permanently absorbed as LDC, but on fixed pay basis with the condition that he would be entitled for regular pay scale after completion of 5(five) years service as LDC as per the policy decision of the Government applicable to all new appointees under the Government.

9. I find certain terms and conditions in the order dated 13th April, 2006. The appointment of the petitioner was purely on temporary basis and would not confer any title to permanent employment. The petitioner was also placed on probation for a period of 2(two) years. It was further stipulated that the appointment could be terminated by the appointing authority without assigning any reasons. The above order was also issued with an approval of the Finance Department.

10. In my opinion, the petitioner accepted the terms and conditions of his appointment on fixed pay basis and he served in that capacity for almost 7(seven) years without challenging the terms of his appointment.

It is only on 6th June, 2015, he submitted representation to allow him regular pay scale for the period he was given pay of Rs.2,345/- treating him as fixed pay employee. Having found no response, the petitioner filed a case before the permanent Lok Adalat in the year 2021 and on the basis of a direction passed by the Lok Adalat, the petitioner has approached this court in the year 2022.

11. I have given my thoughtful consideration to the aforesaid facts as well as the submissions advanced by the learned counsel appearing for the parties. I find no force in the submission of Mr. Banerjee, learned counsel that once the petitioner was allowed the pay scale, his service ought to have been treated as permanent employment in the post of LDC.

12. According to me, allowing minimum basic scale prescribed for a particular post would not mean that the contractual character of the employment is changed and such employee acquires the status of permanent employee. An employee may be entitled to the minimum basic scale of pay for discharging his duties and responsibilities in a regular post alike other permanent employees in the same post discharging similar and identical nature of works, even he is appointed on contract basis. The appointing authority may consider the nature of works a contractual employee performs and if he finds that such employee executes similar and identical duties to those permanent employees, then, he may grant at least the basic pay prescribed for the post such employee holds. But, providing him the pay scale of a regular employee does not confer a right upon him to be treated as permanent employee. Thus, I do not find any illegality or arbitrariness in the order dated 7th May, 2005 wherein the service tenure of the petitioner was extended without altering his initial status of employment as contractual employee.

13. Next question posed to this Court which is necessarily to be answered is that whether the petitioner is entitled to regular pay scale for the period he was appointed and paid salary on fixed pay basis. It is clear that the petitioner was appointed on fixed pay basis w.e.f. 02.02.2006 vide order dated 13th April, 2006. Here, the conduct of the petitioner is required to be noticed. It comes to fore that after the receipt of the order dated 13th April, 2006, the petitioner did not raise any objection to such appointment and only on 6th June, 2015 he submitted a representation, though, his service was regularized with regular pay scale including all other admissible allowances w.e.f. 2nd February, 2011. In the opinion of this Court, the conduct of the petitioner aptly suggests that he accepted the condition of his appointment on fixed pay basis.

14. To deal with the submission of learned counsel for the petitioner that non-granting of pay scale during the tenure of his service on fixed pay is a 'continuing wrong' giving rise to a fresh cause of action in every month when he is paid his salary, in my opinion, the present case is not a case of 'continuing wrong'.

The concept of 'continuing wrong' emerges from Section 22 of the Limitation Act, 1963, which reads as under:

***"22. Continuing breaches and torts.*— In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or tort, as the case may be, continues."**

The object of this section is to enable one to be brought for all loss suffered during the whole period the breach continued. A 'continuing' cause of action is one arising from the repetition of acts or omissions similar to those in respect of which an action is brought. The test in

applying Section 22 is not whether the right is a continuing right but whether the wrong is a continuing wrong. A 'continuing wrong' creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues then the act constitutes a continuing wrong.

In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and the effect of the said injury. Where the injury complained of is complete on a certain date there is no "continuing wrong" even though the damage caused by the injury may continue. In such a case, the cause of action arises once and for all, at the time when the injury is inflicted. If, however, the act is such that the injury itself is continuous, then, there is a "continuing wrong".

It is made clear that where the act of wrong is complete, Section 22 of the limitation Act, 1963 is of no application.

15. In the case in hand, the foundation of claiming the pay scale of Rs.3,300-7,100/- arose out of the order dated 23rd/24th December, 2002 when the nature of his appointment of the petitioner was on contract basis for a certain period. This contract period was ultimately ended on 1st February, 2006, when the nature of his appointment was altered to fixed pay basis. In my considered view, with the end of contractual period the source of granting pay scale prescribed for permanent employee following the doctrine of equal pay for equal work was also ended and his character of service was given a new face, that is, as fixed pay employee w.e.f. 2nd February, 2006.

16. Here, even if, for argument sake, it is said that the petitioner was wrongly appointed as permanent employee in the post of LDC on fixed pay basis, that wrong was completed when he accepted the order dated 13th April, 2006 appointing him on fixed pay basis *vis-a-vis* with the expiry of 5(five) years on 01.02.2011. Since the injury, even if he suffered, that injury being completed on 01.02.2011, in no way be said to be a ‘continuing wrong’.

17. That apart, with the end of contractual period, the petitioner was appointed as permanent employee, but on fixed pay basis as per prevalent policy of the government that all appointments would be made on fixed pay basis for first 5(five) years due to financial constraints. This policy has never been put to challenge and till today, it stands good as confirmed by learned GA appearing for State-respondents.

18. It is not case of the petitioner that any of the employees appointed on fixed pay basis has been provided with regular pay scale within the tenure of their 5(five) years’ service on fixed pay.

19. In the background facts of the present case, there was no wrong at all; to say the least, a “continuing wrong”. There is no breach of rules relating to service conditions of the petitioner. At the cost of repetition, it is pertinent to mention that initially his service was on contract basis, which was ended on 1st February, 2006. During certain periods of such contractual service, the respondents provided him the basic pay scale to the petitioner prescribed for the post of LDC, which was stopped with the completion of contractual period of service. Thereafter, the petitioner was appointed as permanent employee on fixed pay basis for 5(five) years, and after expiry of 5(five) years the petitioner was provided the regular pay scale and other admissible allowances prescribed for LDCs as per the

terms and conditions of appointment. This is not a case where the Court finds breach of any service conditions or rules or administrative decisions. Further, this is not the case that the respondents fail to address any statutory obligation relating to the service condition of the petitioner. In this perspective, none of the acts and administrative decisions relating to the service of the petitioner can be said to be the foundation of continuing wrong which creates a continuing source of injury.

In ***Balakrishna Savalram Pujari Waghmare and Ors. vs. Shree Dhyaneswar Maharaj Sansthan and Ors***, reported in ***AIR 1959 SC 798*** had explained the concept of ‘continuing wrong’ in the context of Section 23 of the Limitation Act, 1908, corresponding to Section 22 of the Limitation Act, 1963, which is as under:

“31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that S. 23 can be invoked. Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary , worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the appellants'

rights though the damage caused by the said decree subsequently continued. Can it be said that, after the appellants were evicted from the temple in execution of the said decree, the continuance of their dispossession was due to a recurring act of tort committed by the trustees from moment to moment? As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action de die in diem. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of S. 23 in such a case. That is the view which the High Court has taken and we see no reason to differ from it.

20. Again, the present case is not a case where wrong salary is being paid due to wrong computation made contrary to pay rules giving rise to fresh cause of action in each and every month. [Ref.- ***M.R. Gupta v. Union of India & Ors*, (1995) 5SCC 628.**]

21. Hon'ble Supreme Court in ***Union of India & Ors vs. Tarsem Singh*, (2008) 8SCC 648** held that a 'continuing wrong' refers to a single wrongful act which causes a continuing injury, which is not the case here, as I observed in the preceding paragraphs.

22. In the case on hand, the petitioner seeks mandamus to direct the respondents to restore the pay scale he was provided during the tenure of his contract period service w.e.f. 02.02.2006 i.e. from the date of his appointment as permanent employee on fixed pay basis, which claim, according to this Court, is absolutely barred by the doctrine of delay and laches since such administrative order was issued in conformity with the

सत्यमेव जयते

JUDGE

Snigdha