

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.338 OF 2021**

Sri Radhamadhab Baishnab,
S/o: Lt. Harekrishna Baishnab,
P.O- Kathalbagan, Kunjaban,
P.S.- NCC, Agartala, West Tripura.

..... **Petitioner(s)**

Vs.

1. The State of Tripura,
(To be represented by the Principal Secretary, Department of
PWD, Government of Tripura, P.O- New Secretariat Complex,
New Capital Complex, Agartala, PIN-799006).

2. The Chief Engineer,
Public Works Department(R & B),
Govt. of Tripura, West Tripura, Agartala, PIN-799006.

3. The Superintending Engineer,
Project Unit, PWD Building, Govt. of Tripura, New Secretariat
Building, New Capital Complex, Agartala, PIN-799006.

4. The Engineering Officer,
O/o the chief Engineer, PWD(R & B), Govt. of Tripura,
Agartala, West Tripura.

5. Sri Sankar Ganguli, (Retired Work Assistant),
S/o- Late Debnath Ganguli, Banerjee Para,
Krishnanagar, Agartala, West Tripura.

6. Sri Alak Jyoti Barua,(Work Assistant),
W/o the Santirbazar DWS Sub Division,
Under DWS Division), Belonia, South Tripura.

7. Sri Narayan Chandra Das,(Retired Junior Overseer),
S/o Late Anil Chandra Das, R/o- Bhati Abhoynagar,
Mulla Para, P.O.- Agartala, West Tripura, PIN-799001.

8. The Accountant General(A &E) of Tripura,
O/o the AG (A & E) Tripura, Bholagiri, Airport Road, Agartala,
West Tripura.

..... **Respondent(s)**

For the Petitioner(s) : Mr. S. Bhattacharjee, Advocate.

For the Respondent(s) : Mr. B. Majumder, Deputy SGI.
Mr. T.K. Deb, Advocate.

Date of hearing : 05.04.2023

Date of delivery of
Judgment & Order : 12.04.2023.

Whether fit for reporting : YES/NO.

HON'BLE THE CHIEF JUSTICE(ACTING)

JUDGMENT AND ORDER

By filling this present writ petition, under Article 226 of the Constitution of India, the petitioner has prayed for directing respondents No.1 to 4 to give the petitioner the benefit of stepping up of his pay and allowances at par with that of his juniors i.e. the respondents No.5 to 7 and to give the arrear pay and salary as a result of such stepping up. The petitioner has further prayed to re-fix the pay scale of the petitioner at par with his junior i.e. the respondents Nos.5 to 7. Despite repeated representations submitted by the petitioner, the respondents No.1 to 4 failed to undo the wrong caused to the petitioner & vide impugned letter, dated 20.03.2020 refused to grant the benefit of stepping up his pay with that of his junior.

2. Hence, this present writ petition has filed seeking the following reliefs:-

"i. Rule upon the respondents to show cause as to why Writ in the nature of mandamus and/or Order or direction of like nature shall not be issued whereby directing the respondents Nos.1 to 4 to give the petitioner the benefit of stepping up of his pay & allowances at par with that of Respondents Nos.5 to 7 and to give the arrear pay & salary as a result of such stepping up to re-fix the pay scale of the petitioner at par with his junior i.e. respondents Nos.5 to 7 by stepping up his pay scale, w.e.f. 31.01.2012.

ii. Rule upon the Respondents to show cause as to why Writ in the nature of mandamus and/or Order or direction of like nature shall not be issued whereby directing the Respondents Nos.1 to 4 & the respondent No.8 to re-fix the regular monthly pension & other pensionary benefits of the petitioner after giving the benefit of stepping upon of his pay to make it at par with that of respondent No.5 to 7, w.e.f. 31.01.2012 & to pay the arrear pay & salary & pension & other pensionary benefits with interest @ 9% per annum.

iii. Rule upon the Respondents to show cause as to why Writ in the nature of mandamus and/or Order or direction of like nature shall not be issued whereby quashing & cancelling the letter, dated 20.03.2020, issued by the Engineering Officer O/o the Chief Engineer, PWD, R&B.

iv. Make the rule absolute.

v. Pass any other Oral Orders as may be considered fit and proper by the Hon'ble High Court."

3. Heard Mr. S. Bhattacharjee, learned counsel appearing for the petitioner as well as Mr. T.K. Deb, learned counsel for respondents No.1 to 4 and Mr. B. Majumder, learned Deputy SGI appearing for respondent No.8.

4. Mr. S. Bhattacharjee, learned counsel appearing for the petitioner submits that respondents No.1 to 4 has infringed upon the legal and constitutional rights of the petitioner. The petitioner has been suffering continuing wrong w.e.f. 31.01.2021, the date on which the petitioner completed 25 years of service without any promotional scale. The official respondents committed wrong to the petitioner by not stepping up the petitioner's pay scale with that of his juniors i.e.

respondents No.5 to 7 and since 31.01.2012 to till date, the petitioner has been suffering the unabated and cascading effect of such wrong committed.

On the point of junior getting high pay scale then senior, Mr. Bhattacharjee, learned counsel appearing for the petitioner referred to *Paras-17 and 18* of the Judgment of the Hon'ble Supreme Court passed in ***Gurcharan Singh Grewal and anr Vs. Punjab State Electricity Board and ors*** reported in ***(2009) 3 SCC 94*** dated ***9th January, 2009*** which is reproduced herein under:-

"17. Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales which the appellant No.1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid lesser salary than his junior. In such circumstances, even if, there was a difference in the incremental benefits in the scale given to the appellant No.1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of the appellant No.1 was also stepped up to that of Shri Shori, as appears to have been done in the case of the appellant No.2.

18. We are unable to accept the reasoning of the High Court in this regard or the submissions made in support thereof by Mr. Chhabra, since the very object to be achieved is to bring the pay scale of the appellant No.1 at par with that of his junior. We are clearly of the opinion that the reasoning of the High Court was erroneous and the appellant No.1 was also entitled to the same benefits of pay parity with Shri Shori as has been granted to the appellant No.2.

Mr. Bhattacharjee, learned counsel also referred to *Paras-18 and 19* of another Hon'ble Supreme Court Judgment passed in ***Commissioner and Secretary To Government of Haryana and others Vs. Ram Sarup Ganda and ors.,***

reported in **(2011) 15 SCC 772** dated **2nd August, 2006** ,
which is reproduced herein below:-

" 18. By the impugned judgment, the High Court has held that the respondents are entitled to get the ACP scales that are applicable to Group-C post, but the Rules, as such, do not provide for that. The Rules say that if there are already two upgradation, then the employee concerned are not entitled to the benefit of ACP Scales. Nevertheless, if ACP scales are higher, they are certainly entitled to the ACP scales at the starting point. The date of giving such ACP scales is the date of entry into the service and though these respondents are entitled to get ACP scales and get fixation of the ACP scales as applicable to Group-D employees and in case there are anomalies to the effect that they received lesser pay than their juniors working in the same cadre/post such senior government servants are entitled to step up of their salary to get it on a par with the salary which is being received by their juniors.

19. In the result, all the appeals are partly allowed. The appellants shall revise the pay scales of the respondents. In case of any anomaly, if the employees who, on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/post, then their salary shall be stepped up accordingly. Revised orders shall be passed within a period of two months of the receipt of the copy of this order by the Government. However, if upon revision of the pay scales, any employee is liable to refund any amount, the Government shall not insist on refund of such amount. If any employees is entitled to get any amount by way of pay revision, the said amount shall be made available to him within a period of six months from the date of receipt of the copy of this order by the Government."

Stating thus, learned counsel urged to allow his prayer of the petitioner herein as appended in the present petition.

5. Mr. T.K. Deb, learned counsel appearing for respondents No.1 to 4 submits that the decision as taken by the official respondents is just and proper. Learned counsel also submitted a comparative statement wherefrom he justified the decisions as taken by the official respondents in regard to the petitioner herein.

6. Heard both sides and perused the evidence on records.

7. In the light of the reasoning given in the Hon'ble Supreme Court's judgments passed in **Gurcharan Singh Grewal(supra)** and **Ram Sarup Ganda (supra)** which has been referred by the learned counsel appearing for the petitioner, wherein principles concerning senior getting lesser pay than junior have been clearly laid down, the present writ petition is allowed. Accordingly, stepping up of the petitioner's pay and allowances in par with the juniors i.e., respondents No.5 to 7 has to be considered. The petitioner is also entitled to all consequential benefits accordingly including arrears.

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

CHIEF JUSTICE (ACTING)