

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C) No. 391 of 2021

1. Dr. Soma Sarkar (Bhattacharya), wife of late Parthapratim Bhattacharya, resident of Town Bardowali, Kalibari Road No.3, P.O. Agartala, P.S. West Agartala, District: West Tripura, PIN-799001, Age-40.

-----Petitioner(s)

-V-E-R-S-U-S-

1. The State of Tripura, represented by the Commissioner & Secretary to the Health & Family Welfare Department, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division: Sadar, District: West Tripura.
2. The Commissioner & Secretary, Health & Family Welfare Department, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division: Sadar, District: West Tripura.
3. The Commissioner & Secretary, Finance Department, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division: Sadar, District: West Tripura.
4. The Director of Health Services, Government of Tripura, Pandit Nehru Complex, P.O. Kunjaban, P.S. New Capital Complex, Agartala, West Tripura PIN-799006.
5. The Principal, Agartala Government Medical College, P.O. Kunjaban, P.S. New Capital Complex, Agartala, West Tripura, PIN-799006.
6. The University Grants Commission, represented by its Secretary Bahadur Saha Zafar Marg, New Delhi-110002.

-----Respondent(s)

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. K. Chakraborty, Advocate.
For Respondent(s)	:	Mr. D. Sarma, Addl. G.A. Ms. A. Banik, Advocate.
Date of hearing	:	20.04.2023
Date of delivery of judgment and order	:	28.04.2023
Whether fit for reporting	:	YES

JUDGMENT & ORDER

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. D. Sarma, learned Addl. G.A. and Ms. A. Banik, learned counsel appearing for the respondents.

[2] This petition has been filed under Article-226 of the Constitution of India for enforcing Constitutional rights of the petitioner guaranteed under Articles-14, 16, 21, 39(d) & 3004 of the Constitution of India directing the respondents to revoke the impugned notification dated 27.08.2019, the impugned letter dated 19.02.2020 and the impugned memorandum dated 28.07.2020 respectively. Further to grant UGC pay scale of Rs.15,600-39,100/- with Grade Pay of Rs.6,000/- in the post of College Librarian, with effect from the date of grant of regular pay scale in favour of the petitioner and further to grant her the UGC pay scale of Rs.15,600-39,100/- with Grade pay of Rs.7,000/- by treating her post as College Librarian (Senior Scale/Academic level-11), w.e.f. the date of completion of PhD degree after completion of 4 years of service, from the date of grant of regular pay scale i.e. 26.07.2019.

[3] The brief facts of the case are that advertisement for appointment to the post of Librarian in the Agartala Government Medical College, under the Health & Family Welfare Department; Government of Tripura was issued on 20.10.2009. Pursuant thereto, the petitioner appeared in a walk-in-interview, whereat she emerged out successful. On 01.01.2010, offer of appointment for the said post of Librarian was issued in favour of the petitioner. On 22.01.2010, the petitioner was appointed to the post of Librarian. On 25.01.2015, the petitioner was accorded with the regular pay scale, in the pay structure of Pay-Band-2 of Rs.5,310-24,000/- with Grade Pay of Rs.2,100/-, thereby fixing her basic pay as Rs.9,920/- per month.

[4] On 27.08.2019, the respondents issued a notification thereby stating that benefit of revised UGC pay scale would be extended to the regular faculty members of the AGMC, but would not extend to other support staff/non-teaching posts. Praying for grant of UGC pay scale, in her favour, the petitioner submitted representations dated 16.10.2019, 27.11.2019, 31.12.2019, 08.01.2020 and 01.06.2020. Vide the letters dated 19.02.2020 and 28.07.2020, the said prayer of the petitioner was rejected by the respondents. In all the states, including the neighboring states of the State of Tripura, the post of Librarian attached with different Government Medical Colleges, has been accorded with the UGC pay scale, in tune with the prescriptions, contained in the UGC regulations, promulgated from time to time. But, in the case of the petitioner, the same was not granted.

[5] Hence, the present petition has been preferred by the petitioner before this Court for redress.

[6] Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Chakraborty, learned counsel appearing for the petitioner has submitted that for the period, stretching from 15.05.2004 to 27.05.2005, the petitioner had served as Library Assistant in the department of Library under the Gurunanak Institute of Technology, Kolkata. In acknowledgement thereof, the Registrar of that institute had issued a certificate dated 27.05.2005 indicating the same. From 28.05.2005 to 28.02.2007 the petitioner had served as a Librarian in the Tripura Medical College & Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania, Agartala, run by the Global Education Net. In acknowledgement thereof, the Assistant General Manager, Global Education Net had issued a certificate dated 15.10.2009 indicating the same.

[7] It has been further contended that in furtherance of the approval of the Governor of Tripura and with the concurrence of the Finance Department, the Deputy Secretary, Health & Family Welfare

Department, Government of Tripura, issued a notification dated 07.01.2006 notifying regarding creation of 15 posts of Technical Staffs of ancillary services for the Agartala Govt. Medical College, Agartala. Out of the said 15 newly created sanctioned posts, serial number-4 thereof, provided for the post of Librarian, under the pay scale of Rs.2,730/- (Fixed).

[8] Pursuant to the creation of the said post of Librarian, the Director of Health Services, Govt. of Tripura issued an employment notification dated 20.10.2009 thereby calling upon the eligible willing candidates to appear in a Walk-in-interview for filling up some vacant posts, on fixed pay basis, under the Health & Family Welfare Department, Government of Tripura. Out of the said vacant posts, one number of post was advertized for appointment to the post of Librarian, carrying the monthly fixed pay of Rs.7,173/- and postulating the requisite qualification of graduate from any recognized university and degree in Library Science from the recognized institute.

[9] Mr. Roy Barman, learned senior counsel has further averred that on completion of five years of service vide an order dated 16.02.2015 issued by the Director of Health Services, Government of Tripura the petitioner was accorded with the regular pay scale in the pay structure of Pay Band-2 of Rs.5,310-24,000/- with Grade Pay of Rs.2,100/- with effect from 25.01.2015 thereby fixing her basic pay at Rs.9,920/- per month. At this juncture, reference may be made a notification dated 27.08.2019 issued by the Secretary, Health & Family Welfare Department, Govt. of Tripura inter alia noting that Ministry of Human Resource Development, Govt. of India has communicated the new scheme of revision of pay of Teachers and other academic staffs in Degree Colleges, under the purview of the University Grants Commission (UGC for short) and it has been indicated that the said scheme shall be applicable to teachers and other

academic staffs in Degree College and other Degree Level Institutions, under the purview of UGC.

[10] From a bare perusal of the notifications dated 29.12.2010 & 04.09.2018 and the letter dated 07.09.2018 it would manifestly reveal that the persons, holding the post of Librarian in different colleges, including Government Medical Colleges, are enjoying the benefit of UGC pay scale per contra, the petitioner has been deprived therefrom. The North Eastern Indira Gandhi Regional Institute of Health & Medical Sciences (NEIGRIHMS), Shillong, which is an autonomous Institute, under the Ministry of Health & Family Welfare, Government of India provides UGC pay scale to the post of Librarian.

[11] Even though, the advertisement, pursuant whereeto, the petitioner was appointed to the post of Librarian in the AGMC, was issued on 20.10.2009 and she was appointed to the said post on 22.01.2010 but the recruitment rules therefore was issued, much posterior thereto i.e. on 25.10.2016. From a bare perusal thereof, it would manifestly reveal that the same does not prescribe the educational qualification, either for MLISC or PhD. The same just prescribes for graduation and degree or diploma in Library Science. The said Recruitment Rules have been issued *de hors* the prescriptions, contained in the UGC Regulations, 2009.

[12] In the Government Medical Colleges of the State of Assam, State of Mizoram, NEIGRIHMS, Shillong & AIIMS, New Delhi, for recruitment to the post of Librarian, even though, holding of PhD Degree has not been prescribed as a requisite qualification, but holding the MLISC Degree has been made as the requisite qualification. Holding the said degree of MLISE, the appointees serving therein in the post of Librarian, have been accorded with the UGC pay scale.

[13] The person holding the post of Librarian, in the Tripura University as well as in the Maharaja Bir Bikram (MBB) University is enjoying the UGC pay scale. The post of Librarian in a college and the post of Assistant Librarian in a University are equivalent posts, as would be evident from the UGC Regulations, 2009 and hence, the former is entitled to the same pay scale and in view of that the petitioner is entitled for the same benefit.

[14] The petitioner having been possessing MLISC Degree & PhD in Library Science, being serving in the AGMC, Agartala, which is a government medical college of the State of Tripura, is entitled to get the UGC pay scale of Rs.15,600-39,100/- with grade pay of Rs.6,000/- in the post of College Librarian, w.e.f. the date of grant of regular pay scale in her favour and further to get the UGC pay scale of Rs.15,600-39,100 with grade pay of Rs.7,000/- by treating her post as College Librarian (Senior scale/Academic Level-11) w.e.f. the date of completion of PhD degree after completion of four years of service from the date of grant of regular scale.

[15] Mr. D. Sarma, learned Addl. G.A. and Ms. A. Banik, learned counsel appearing for the respondents in support of their case has submitted that the petitioner was appointed as per notification dated 20th October, 2009 issued by the Director of Health Services, Government of Tripura, under the Health & Family Welfare Department including Librarian against the vacancy positions as laid down the eligibility criteria and the terms and conditions for recruitments. Thereafter, the petitioner had applied for the post of Librarian as per requisite qualification of the said advertisement. After the process of interview the petitioner was selected for offer of appointment to the post of Librarian in the Directorate of Health Services, Govt. of Tripura vide memorandum dated 1st January,

2010 on a fixed pay of Rs.7,173/- for a period of one year only per month inter alia with the terms and conditions for this appointment.

[16] Meanwhile, the petitioner filed a writ petition against the State of Tripura and others before this Court to grant the emoluments of pay similar to the structure of UGC on the recommendation of the 7th CPC as per communication of notification dated 27th August, 2019 issued by the Health & Family Welfare Department, Govt. of Tripura. Worthwhile, it is to be mentioned herein that for the AGMC, Agartala the aforesaid regulations lay down the accreditation-benchmarks to be attained. It therefore becomes amply clear that insofar as the AGMC is concerned, the post of Librarian is only subservient to the academic faculty, not an integral part thereof. The petitioner, it seems, tried to mistakenly equate her post with those existing in Universities/Academic Institutions where Library Science is a part of pedagogy and taught as a distinct professional course.

[17] The chronicle of the academic performance as obtaining certificates by the petitioner in this petition is completely personal carrier having opportunity to another services in the higher institutions of the Department alike to the State (Central) Universities, General Degree College, law College and other Institutions under the Education (Higher), Government of Tripura. These educational institutions had merging under the purview of UGC on the recommendation of 7th CPC vide notification dated 25th June, 2019.

[18] If anyone working in a particular firm as the case may be, the competent authority should be compelled to issue experience certificate for further better employment of the incumbent. Here, the petitioner was working as Asstt. Librarian in the Department of Library, Gurunanak Institute of Technology, Kolkata, Dr. BRAM Teaching Hospital, Hapania

and ICFAI University, Tripura respectively in the different times of the year obtaining experience certificate mandatory.

[19] Creation of 15 number categories of posts are the Technical Staff of Ancillary Services for the AGMC vide notification dated 07.01.2006 by the Health & Family Welfare Department is the administrative process to grant of sanctioning the posts in different categories of the department, but the appointing authority of the category of posts Group-C & D are the Director of Health Services, Govt. of Tripura under the Health & Family Welfare Department. Hence, employment notification for filling up the different categories of posts is executed by the Director of Health Services, Government of Tripura as per recruitment rules.

[20] Accordingly, as per employment notification dated 20th October, 2009, the petitioner provisionally selected for appointment to the post of Librarian after execution of formal walk in interview for the said post. the petitioner was appointed for the post of Librarian and confer re-appointment vide memorandum dated 1st January, 2010 with terms and conditions as stated in the offer of appointment by the Director of Health Services, Govt. of Tripura. In the offer of appointment it has been observed that the appointment carries the liability to serve at any part of the State of Tripura. So, there is no scope for having entitled to avail the UGC scale as similar to another Librarian of Education (Higher) Department.

[21] The application through open advertisement dated 20.10.2009 for filling up the 16 different categories of posts carrying the emoluments of fixed pay basis @7,173/- per month through walk in interview with the specified eligibility criteria and requisite qualifications as shown in the table under the Health & Family Welfare Department. As per employment notification the petitioner appeared before the walk in interview board.

Thereafter, on the recommendation of the interview board the petitioner was issued offer of appointment dated 01.01.2010 issued by the respondent No.4 purely on temporary basis for a period of one year with a fixed pay of Rs.7,173/- per month with remuneration.

[22] On the memorandum, the offer of appointment clearly defined that the said offer of appointment provides the appointment carries the liability to serve at any part of the State of Tripura and the Director of Health Services is the appointing authority of the said employment. On acceptance of the offer of appointment by the petitioner and subsequent documents verification, the petitioner was posted at Agartala Government Medical College, Tripura. The tenure of service extending from time to time by the respondent No.4 is the formal procedure as laid down in Tripura F.R.-11 of the Tripura Civil Services (Conduct) Rules, 1988.

[23] As per policy of the government the director of Health Services, Govt. of Tripura, the regular pay scale under the pay structure of pay band-2 is Rs.5,310-24,000/- with Grade Pay Rs.2,100/- w.e.f. 25.01.2015. The Govt. of India, Ministry of Human Resources Development Department vide their letter dated 2nd November, 2017 has communicated the new scheme of revision of teachers and other academic staff in Degree Colleges under the purview of UGC with a copy to all the State Govt. for taking necessary action. In the said letter it has been indicated that the scheme shall be applicable to teachers and other academic staff in Degree Colleges and other Degree level Institutions under the purview of UGC.

[24] The Govt. of Tripura Education Department has already notified the revision of pay scales for the teachers in the State Universities, General Degree Colleges, Institute of Advance Study in Education, CTE, Music College, Law College under the purview of UGC on the recommendation of the 7th CPC vide notification dated 25th June, 2019.

[25] After careful consideration of the matter the Health & Family Welfare Department has decided to extend this scheme of revision of pay as recommended by the Govt. of India for the regular faculty members of Agartala Govt. Medical College (AGMC) keeping in conformity with the ROP notification of the Education (Higher) Department for the teachers in the State Universities, General Degree Colleges, Institute of Advance Study in Education CTE, Music College, Law College under the purview of UGC on the recommendation of 7th CPC. In the light of the foregoing facts and circumstances, the claim of the petitioner to get the UGC pay scale appears clearly to be devoid of merit, unsustainable and therefore rejected altogether hereby.

[26] On receipt of the representation from the petitioner, the respondent had quietly examined that the subsequent notification of Health & Family Welfare Department dated 27th August, 2019 revised pay scale of regular faculty members of the AGMC under the purview of the UGC on the recommendation of 7th CPC listed only the following posts constituting the academic faculties viz. (a) Assistant Professor (b) Associate Professor (c) Professor/Principal and Administrative position equivalent thereof. It is also mentioned here that the posts such as Basic Teachers (Tutor, Registrar/Sr. Resident), Workshop Superintendant and other support staffs/Non-teaching post are not considered as academic faculty. The reply against the representation of the petitioner was communicated on 18.02.2020 and 28.07.2020 stating that the claims to the UGC pay scale appear distinctly non-merit and unsustainable.

[27] It has been categorically stated that it totally unknown to the respondents how the Govt. of Assam has been pleased to extend the UGC pay scale among the staff of medical college of Assam including Librarian. Perhaps the State Legislature had adopted the resolution to approve the State Cabinet hence, the post of Librarian had introduced under the revised

scheme of UGC pay scale. It has been further stated that there is no scope to entertain the enjoying benefit and to the basic amenities alike to the Govt. Medical College of the Northeastern Region of the Country. The comparison between AGMC and other Medical Colleges in Northeast India were completely depending upon the State recruitment rules.

[28] The incumbent of Librarians from the Northeastern regions in different Medical Colleges were initially appointed by the Directorate of Medical Education of their concerned States, hence they were enjoying all basic amenities under the Scheme of revision of UGC pay scale, 7th CPC. But, the petitioner was appointed under the establishment of Directorate of Health Services, Govt. of Tripura as Group-C (Non-Gazetted) category under the Health & Family Welfare Department. So, the comparison of revised pay scale under UGC, the State of Assam is not valid thus, it is not application in the present case.

[29] In view of above analogy, this Court is of the view that UGC regulation and application and commencement shall be applied to every University established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under Clause-f of Section-2 of the University Grants Commission Act, 1956 and every institution deemed to be a university under Section-3 of the said Act. The regulation of the UGC Act laid down for revision of pay scale, minimum qualifications for appointment and other services Conditions University and College Teachers, Librarians and Directors of Physical Education as measure for the maintenance of standards in higher education.

[30] Thus, nothing but, claiming of UGC pay scale by filing this petition and whereby the petitioner had been appointed to the post of Librarian, Group-C (Non-Gazetted) under the Directorate of Health

Services, Govt. of Tripura with requisite qualification of degree or diploma in Library Science as per Recruitment Rules as notified for recruitment to the post of Librarian on 20th October, 2009. The petitioner herein is not appointed under the UGC norms to prove the benefit of pay scale equating on per other Librarians in the University or in the College. She was appointed under the Health & Family Welfare Department, Govt. of Tripura. Accordingly, in the light of the above facts and circumstances, the claim of the petitioner i.e. entitlement for UGC pay scale is not sustainable and thus, rejected.

[31] In the light of the above, this Court is of the considered opinion that no case has been made out by the petitioner to relief as sought for in the present writ petition and consequently, the same stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A.Ghash

