

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WP(C) No.368 of 2023

For Petitioner(s) : Mr. A. Bhowmik, Advocate.
For Respondent(s) : Mr. M. Debbarma, Addl. G.A.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_O_R_D_E_R_

19/06/2023

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioners and Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents.

This petition has been filed under Article-226 of the Constitution of India for a direction to the respondents to grant one advance increment in favour of the petitioners under Rule-13(1) (v) of the Tripura State Civil Services (Revised Pay) Rules, 2009 and also for setting aside the memorandum dated 6th July, 2011 issued by the Finance Department, Government of Tripura whereby a decision has been taken to provide lump sum benefit to the teachers. Further, violation of statutory rules and right of the petitioners to get an advance increment as per Rule-13(1)(v) of Tripura State Civil Services (Revised Pay), Rules, 2009.

The petitioners have prayed 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 granted the benefit of one increment under Rule-13(1) (v) of TSCS (RP) Rules, 2009 along with all arrears of financial benefit.

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 the benefit of one increment as per the judgment and order at Annexure-22 and 23 of this writ petition as upheld by the judgment of the Ld. Division Bench at Annexure-24 of this petition.

iv. And after hearing the parties, be pleased to make the rule absolute.”

The case of the petitioner is that the petitioner No.1 was appointed as Post Graduate Teacher in Physics Subject under the respondent department vide memorandum dated 17.07.2007 w.e.f. 01.08.2007. Thereafter, on completion of five years of service the petitioner was extended with the benefit of regular pay scale vide memorandum dated 31.08.2012 w.e.f. 01.08.2012. The petitioner No.1 also highlights that the petitioner No.1 had completed B.Ed. from Tripura University on 20.09.2007 and as such the petitioner No.1 completed her B.Ed. after entry into service but prior to 01.01.2009.

The petitioner No.2 was appointed as Post Graduate Teacher in Physics subject under the respondent department vide memorandum dated 17.07.2007 w.e.f. 01.08.2007. Thereafter, on completion of five years of service the petitioner No.2 was extended with the benefit of regular pay scale vide memorandum dated 31.08.2012 w.e.f. 01.08.2012. The petitioner No.2 also highlights that the petitioner No.2 had completed B.Ed. from Tripura University on 20.09.2007 and as such the petitioner No.2 completed B.Ed. after entry into service but prior to 01.01.2009.

The petitioner No.3 was appointed as Post Graduate Teacher in English subject under the respondent vide memorandum dated 17.07.2007 w.e.f. 01.08.2007. Thereafter, on completion of five years of service the petitioner No.3 was extended with the benefit of regular pay scale vide memorandum dated 31.08.2012 w.e.f. 01.08.2012. The petitioner No.3 also highlights that the petitioner No.3 had completed B.Ed. from Tripura University on 20.09.2007 and as such the petitioner No.3 completed B.Ed. after entry into service but prior to 01.01.2009.

Similar issue with regard to increment under Rule-13(1)(v) of the ROP Rules, 2009 was decided by this Court. Vide judgment and order dated 19.01.2022, this Court held that in service teachers who completed B.Ed. after entry into service and prior to 01.01.2009 would be entitled to one increment. Similar judgment was passed in WP(C) No.673/2021. Against the said judgments, the State of Tripura preferred appeal which was dismissed vide judgment and order dated 06.12.2022.

The memorandum dated 6th July, 2011 which restricts the operation of Rules of 2009 is illegal being violative of the statute. The said memorandum also restricts the operation of the rules and it is a settled law that executive instructions cannot supplement the rules but, can supplant the rules. Vide memorandum dated 6th July, 2011 the respondents have decided to grant lumpsum benefit which is not there in the rules and as such, the said memorandum is illegal and requires interference by this Court. Further, the petitioners have stated that they are on fixed pay basis for 5 years as per government policy but the petitioners were appointed against sanctioned posts carrying regular pay scale. Therefore, the decision to deny the increment to the petitioners on the ground of being fixed pay for a period of 5 years is illegal.

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

In view of above, without expressing any opinion on merits, the present petition stands disposed of directing the respondents to consider the case of the petitioners in accordance with law within a period of three months from the date of receipt of the copy of this order.

In the result, the present petition stands disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A. Ghosh

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GHOSH

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