

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 426 OF 2021

Sri Pinaki Samanta, son of Sri Jogendra Chandra Samanta,
Tripura Police Service, resident of Ramkrishna Ashram Road,
Town Bordawali, PO-Agartala, PS-West Agartala,
District-West Tripura, Pin-700001.

.....**Petitioner.**

Vrs.

1. The State of Tripura, represented by the Secretary & Commissioner,
Department of Finance, Government of Tripura, having his office at
New Secretariat Complex, Gorkhabasti, Agartala,
PO-Kunjaban, PS-New Capital Complex, Sub-Division-Sadar,
District-West Tripura.

2. The Deputy Secretary,
Department of Finance (Establishment Branch), Government of Tripura,
having his office at New Secretariat Complex, Gorkhabasti, Agartala,
PO-Kunjaban, PS-New Capital Complex, Sub-Division-Sadar,
District-West Tripura.

3. The Commissioner & Secretary, GA (P&T) Department,
Government of Tripura, having his office at New Secretariat Complex,
Gorkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-
Division-Sadar, District-West Tripura.

....**Official Respondents.**

4. Smt. Sarmistha Laskar (Das), 34, Azad Hind Road,
Dhaleswar, Agartala, P.O. Dhaleswar, PS-East Agartala,
Sub-Division-Sadar, District-West Tripura. [The **Next-of-kin**,
Legal Heir and W/o Late Nalini Ranjan Das,
Ex-Officer of Tripura Police Service].

....**Proforma Respondent.**

Present:

For the petitioner (s) : Mr.Sankar Lodh, Advocate.

For the respondent (s) : Mr. D. Bhattacharya, G.A.
Mr. S. Saha, Advocate.

Date of hearing : 07.12.2022

Date of delivery of
judgment and order : **20.02.2023**

Whether fit for
reporting : **Yes**

HON'BLE MR.JUSTICE ARINDAM LODH**Judgment & Order**

The main relief, the petitioner has sought for in the present writ petition, is as under:

*“ii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, to revoke/rescind the impugned letter dated 15th January 2021(Annexure-14 infra), and forthwith accord the benefit of the correct fixation of pay, by stepping up the pay of the petitioner at par with the pro-forma respondent, **with effect from 28.03.2000, thereafter consequential advancement of the pay scale in the higher scale of pay which Rs.11150-18275/- and the promotion scale, with effect from 31.10.2002**; followed by grant of **one increment** with effect from 20.2.2010 i.e., from the date of actual/functional promotion to TPS Grade-I in favour of the petitioner **along with arrears thereof.**”*

2. Factual background:

2.1 The petitioner was appointed to the post of Deputy Superintendent of Police [for short, DySP] in the Grade-II Cadre of Tripura Police Service [for short, TPS], Tripura through proper selection process

and after completion of necessary training, he joined to the post of DySP on 31-10-1998 in the pay scale of Rs.2100-3000-5000/-. Tripura State Civil Services (Revised Pay) Rules, 1999 [for short, “ROP Rules,1999”] was introduced by the Government of Tripura wherein the pay structures of its employees had been revised. The said ROP Rules, 1999 was made effective from 01.01.1996. It is apposite to mention that under ROP Rules,1999, the entry level scale of pay for the ‘direct recruit TPS Grade-II Officers’ was revised to Rs.7800/- to Rs.15100/- whereas the entry level scale of pay for the promotee TPS Grade-II Officers was revised to a higher scale of pay of Rs.10000/- to Rs.15100/-. On the other hand, the pay scale of Rs.10000/- to Rs.15100/- was prescribed for ‘direct recruit TPS Grade-II Officers’ after 4(four) years of service as a matter of scale advancement in terms of Clause (d) to Rule 10 of ROP Rules,1999. Therefore, according to the petitioner, there was **a clear distinction as regards fixation of pay scales between the direct recruitee and promotees.**

2.2 Further, the petitioner was directly appointed to the post of TPS Grade-II (DySP) on 31-10-1998 and his basic pay as on 28.03.2000 was fixed at Rs.8075/- in the scale of pay of Rs.7800-15100/-, whereas, the proforma respondent was promoted to the post of TPS Grade-II as DySP on 28.03.2000 with his initial basic pay admittedly fixed at Rs.10000/- in the

scale of pay of Rs.10000-15100/-, which is also revealed from his pay slips, etc. dated 08.10.1999, 11.04.2000 [Annexure-6 to the writ petition].

2.3 According to the petitioner, such difference of pay scales in the same Cadre is discriminatory and his pay scale should be at par with the proforma respondent who in spite of being junior to him was drawing higher pay w.e.f. 28.03.2000. The said fact for the first time came to the notice of the petitioner in the year 2020 and immediately he submitted a representation [Annexure-7 to the writ petition] on 08.05.2020 to the Deputy Secretary, Finance Department (Esstt.), Government of Tripura through proper channel claiming re-fixation of his pay by way of stepping-up of his pay scale at par with Sri Nalini Ranjan Das, the proforma-respondent herein w.e.f. 28.03.2000, that is, the date from which the said pay scale was given to proforma-respondent. The basis of claim of the petitioner was primarily based upon the fundamental principle of stepping-up of pay under F.R. and by way of operation of Rule 9.A. of ROP Rules, 1999.

2.4 On receipt of the representation of the petitioner, the Government had sought for some clarifications. In response to such queries made by the Government, the petitioner as well as the department concerned had clarified and further reiterated his claim for stepping-up of his pay scale by way of removing the anomaly. Ultimately, vide

correspondence dated 15th January, 2021, the Deputy Secretary, Finance Department (Establishment Branch), Government of Tripura addressed to the Director General of Police, Tripura, Agartala with a copy to the petitioner regretted the claim of the petitioner assigning the following reasons:

“i) Under TPS Cadre Rules, 1967-Shri Pinaki Samanta is entitled to fixation of pay in the scale of pay of Rs.7800-15100/- whereas Sri Nalini Rn. Das (being a promote TPS officer) is entitled to fixation of pay in the scale of Rs.10000-15100/-. So, the Service Rules differentiate the entitlements of basic pay between these incumbents;

ii) Whereas, F.R. 22(I)(a)(1) has been applied in case of Sri Das, the same cannot be applied in case of Sri Samanta, as he is a direct recruit;

iii) At the time, when Sri Samanta drew basic pay of Rs.7800/- higher post; the basic pay of Sri Das in the lower post was Rs.8575/-. So, the question of having higher pay in the lower post in case of Sri Samanta is not applicable; hence, stepping up of pay cannot be allowed.

iv) The Service Rules of Sri Samanta clearly indicate that he is entitled to Rs.10,000/- after 4 years. So, the question of allowing his pay of Rs.10000/- before completion of 4 years and subject to clearness of Department examination, if any, does not apply. Further, Sri Samanta has not established any Law/Rule under which he is covered for Rs.10000/- after 2 years service. Hence, there is no cause of action on the part of the Administrative Department to consider his representation for stepping up of pay.

v) Sri Samanta has not established/furnished any case, where his batch mates have been drawing higher pay than him on account of stepping up of pay;

vi) The drawl of higher basic pay by Sri Das, in his lower post as Sub Inspector is an outcome of High Court order. This order itself is under sub-judice before the Hon’ble Apex Court. Until the case is finally settled in the Supreme Court; there is no reason to compare the basic pay of these two persons.”

2.5 The petitioner contended that he being senior in the cadre than that of the proforma-respondent should not get lower pay scale only for the reason that he is a direct recruitee, and the Government should re-fix his pay scale by way of equalization/up-gradation in the scale of Rs.10000-15100/- w.e.f. 28.03.2000, initially as compared to that of the proforma-respondent and thereafter movement in the pay scale of Rs.11150-375-18275/- w.e.f. 31.10.2002 as a benefit of time-bound scale advancement after completion of 4(four) years of service in Grade-II of TPS followed by fixation of pay in terms of paragraph 2 in sub-rule (8) of Rule 10 of TSCS(RP) Rules,2009 with one increment on his actual/functional promotion to TPS Grade-I. It is the ultimate grievance of the petitioner that if the basic pay of the petitioner was correctly accorded to the petitioner, at par with the proforma respondent i.e. Sri Nalini Rn. Das, then, he would have drawn enhanced amount of pay and non-granting of the same is *per se* wrong and arbitrary inasmuch as violative of Rule 9.A. of ROP Rules,1999 resulting invidious discriminations as embodied under Articles 14, 16, 19, 300A of the Constitution of India.

2.6 The case of the State-respondents is mainly centered around the correspondence dated 15.01.2021, whereby the claim of the petitioner was regretted. Apart from the grounds of rejection extracted here-in-above.

Further case of the State-respondents is that the instant writ petition is barred by delay and laches.

3. Submissions of the Counsel:

3.1 I have heard Mr. Sankar Lodh, learned counsel appearing for the petitioner and Mr. D. Bhattacharya, learned G.A. assisted by Mr. S. Saha, learned counsel appearing on behalf of the State-respondents.

3.2 Mr. Lodh, learned counsel appearing on behalf of the petitioner has emphasized on Rule 9.A. of ROP Rules, 1999 and contended that the State-respondents had violated Rule 9.A. of ROP Rules, 1999 rejecting the claim of the petitioner for stepping-up/up-gradation his pay scale at par with the proforma respondent, Sri Nalini Rn. Das who was junior to the petitioner as he was promoted to the post of Grade-II i.e. as DySP on 28.03.2000, i.e. at a later date than that of the date of appointment of the petitioner. According to Mr. Lodh, learned counsel for the petitioner, the pay scale of senior officer must be at par with his junior officer and non-granting of the same would be illegal, arbitrary and discriminatory and violative of Articles 14, 16, 19 and 300A of the Constitution of India. In support of his submission, learned counsel for the petitioner has pressed into service the judgment of the Supreme Court in ***Kamlakar & Ors. Vrs. Union of India & Ors., (1999) 4 SCC 756***; a judgment of this court passed

in *WP(C) No.267 of 2013*, titled as *Manab Bhattacharjee Vrs. the State of Tripura & Ors.* decided on 04.07.2016.

To brush aside the plea taken by the State-respondents in their counter affidavit that the instant writ petition is barred by delay and laches, Mr. Lodh, learned counsel appearing on behalf of the petitioner relying upon the case of the *Union of India & Ors. Vrs. Tarsem Singh, reported in (2008) 8 SCC 648*, contended that non-granting of actual and legitimate pay scale was a continuous wrong ultimately affecting the salary and pension of the employee and in that case, cause of action actually continues from month to month.

3.3 *Per contra*, Mr. Bhattacharya, learned G.A. submitted that the instant writ petition is absolutely barred by delay and laches and on this ground alone, the instant writ petition should be dismissed *in limine*. Secondly, learned G.A. submitted that the pay scale of the petitioner was fixed in compliance with F.R. 22(I)(a)(1) and as a whole, his deliberations was in the line of the grounds taken by the State-respondents in their correspondence dated 15.01.2021.

4. Analysis:

4.1 I have given my thoughtful consideration to the submissions of the learned counsel appearing for the parties to the *lis*.

4.2 At the outset, it would be useful to reproduce the relevant rules as relied upon and referred to by learned counsel appearing for the petitioner and learned G.A. appearing on behalf of the respondents.

4.3 Mr. Lodh, learned counsel for the petitioner has referred to Rule 9.A. of ROP Rules, 1999 in support of stepping-up/up-gradation of the pay scale of the petitioner. That part of Rule 9.A., which is necessary and relevant to decide the question involved in this writ petition is reproduced here-in-below:

“9. STEPPING UP OF PAY:

A.....However, if the revised pay of senior (without stepping up) is lower than that of junior employees, the pay of senior employee will be stepped up to an amount equal to the pay fixed for the junior employee in revised scale of pay F.R.om the date the stepping up was permitted in the existing scale with the approval of the Finance Department or by the Department as per existing orders of the Government.”

4.4 On careful reading of Rule 9.A. of ROP Rules, 1999, it is crystal clear that a senior officer in the same cadre getting lower pay scale than that of an officer/employee junior to him having higher pay scale, in that case, the pay scale of the senior officer/employee would have to be stepped-up to the figure equal to the pay fixed for the junior employee/officer in the revised scale of pay.

4.5 Admittedly, the petitioner was a direct recruitee in the post of TPS Grade-II (DySP) who joined the post on 31.10.1998 in the scale of pay of Rs.2,100-3,000-5000/-. Subsequently, with the introduction of ROP

Rules, 1999 this scale was upgraded to Rs.7,800-15,000/- w.e.f. 01.01.1996. On the other hand, Sri Nalini Ranjan Das, the proforma-respondent herein was promoted to the post of DySP in the post of TPS Grade-II on 28.03.2000 in the scale of pay of Rs.10,000-15,100/-. Curious enough, ROP Rules, 1999 prescribes the pay scale of Rs.10,000-15,100/- for the promotee officers in the post of DySP, TPS Grade-II, whereas the pay scale for the direct recruitee officers in the post of DySP, TPS Grade-II was prescribed Rs.7,800-15,000/-. Besides, the pay scale of Rs.10,000-15,100/- was given to directly recruited TPS Grade-II officers only after completion of 4(four) years of service in the post of DySP in the form of benefit of CAS-I vide Government of Tripura Notification No.F.4(6)-FIN (PC)/95, dated, Agartala, the 6th Feb,1999. Therefore, there was a separate and distinct scale of pay prescribed for direct recruitee and promotee officers in the same post and cadre.

4.6 Hon'ble Supreme Court in *Kamlakar & Ors.* (supra) clearly held that once direct recruits and promotees are in one cadre, the distinction between them disappears, at any rate so far as equal treatment in the same cadre for payment of pay scale given is concerned. The birthmarks have no relevance in this connection. [SCC.p.759,para 12]

4.7 It would not be permissible to prescribe distinct and separate pay scales for the officers holding the post of DySP (TPS, Grade-II) on

consideration of the fact that some of the officers were direct recruitees and some were promotees.

4.8 In the context of the present case, Rule 9 of Rules, 1999 also plays an important role which clearly says that the pay scale of a senior officer who is a direct recruitee and gets lower pay scale than that of a promotee officer who is promoted and joined in the higher post i.e. in the same cadre to that of a direct recruitee, in that case, the pay scale of the senior officer joining in the cadre earlier than that of promotee officer shall be stepped-up/up-graded and the scale of pay of the direct recruitee being the senior in the cadre, shall be re-fixed to the figure equal to the pay scale of the promotee officer joining in the same cadre at a later date than that of a direct recruitee.

4.9 Since the State-respondents primarily relied upon F.R.22(I)(a)(1) to reject the claim of the petitioner, it would be useful to reproduce the relevant portion of the same, which reads as under:

“22. (I) The initial pay of a government servant who is appointed to a post on a timescale of pay is regulated as follows:

(a)(I) Where a government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the timescale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only, whichever is more.

4.10 On careful reading of above quoted F.R.22 (I)(a)(1) makes it aptly clear that when a government servant is promoted or appointed to a higher post and the higher post he is promoted to carries duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the timescale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only, whichever is more.

4.11 Keeping in mind the subject of controversy, it is also necessary to extract F.R.I(a)(2), which is as under:

“F.R. I(a)(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the timescale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis.”

4.12 F.R.22(I)(a)(2) crystallizes that the benefit of an additional increment, which is available to a government servant under F.R.22(I)(a)(1), would not be available to the government servant if the higher post he is promoted or appointed to does not carry duties and responsibilities of greater importance than those attaching to the post held by him.

4.13 It is not the case of the respondents here that both the petitioner and the proforma-respondent were holding same feeder post and the anomaly is attributed due to the fact that the proforma-respondent though junior to the petitioner was drawing from time to time a higher pay than the petitioner even in the lower post by virtue of grant of advance increment so that invoking F.R. 22-C [now F.R.22(I) (a)(1)] the scale of pay of the petitioner would not be stepped up.

4.14 For the reasons stated above, Rule 9.A. of ROP Rules, 1999 would come into play for equalization of the scale of pay of the petitioner with that of the proforma-respondent to bring parity in the pay scale as revised under ROP Rules,1999 by way of removing the anomaly as regards the fixation of two distinct and separate scales of pay for direct recruitee officers and promotee officers holding similar and identical post in the same cadre in the performance of similar and identical duties and responsibilities.

4.15 In this context, Hon'ble Supreme Court in *Syed Abdul Qadir vrs. State of Bihar*, reported in (2009) 3 SCC 475 interpreted and clarified the affect of F.R. 22(I) (a)(1) and F.R. 22(I)(a)(2) with reference to F.R. 22-C [now substituted and replaced by F.R.22(I)(a)(1) and F.R.22(I)(a)(2)] holding that—“A reading of F.R.22-C makes it clear that benefit of an additional increment would be extended to a government servant in the

event of his being promoted or appointed to a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him.”

4.16 Thereafter, the Apex Court held thus- [SCC.p.487, paras 39,40,41]

“39. Rule 22(I)(a)(1) provides that when a government servant is promoted or appointed to a higher post and the higher post he is promoted to carries duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the timescale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only, whichever is more.

40. According to F.R. 22(I)(a)(2), the benefit of an additional increment, which is available to a government servant under F.R. 22(I)(a)(1), would not be available to the government servant if the higher post he is promoted or appointed to does not carry duties and responsibilities of greater importance than those attaching to the post held by him.

41. Even, according to F.R. 22-C, the additional increment was to be granted only in cases where the incumbent on promotion or appointment to a higher post has to discharge the duties and responsibilities of greater importance. Therefore, in cases where on promotion or appointment to the higher post no duties and responsibilities of greater importance—than those being discharged in the post held by the incumbent regularly prior to the promotion—were to be discharged by the government servant, the pay fixation formula is provided for under F.R. 22(I)(a)(2) according to which benefit of additional increment is not to be extended at the time of fixation of pay on the promotional post.”

4.17 Here, under ROP Rules,1999 two separate pay scales have been prescribed i.e Rs.7,800-15,000/- for the direct recruitees and Rs.10,000-15,100/- for the promotee officers. It is a clear anomaly and the respondents must remove this anomaly allowing the pay scale to the petitioner, being a direct recruitee, in the post of DySP (TPS Grade-II) at par with the pay scale of the promotee officer (proforma-respondent) i.e. Rs.10,000-15,100/-. In other words, the pay scale of the petitioner has to be

up-graded/stepped-up to Rs.10,000-15,100/- w.e.f. the date the proforma-respondent had joined i.e. on 28.03.2000, being a promote officer, in the revised pay scale of Rs.10,000-15,100/-.

4.18 In the opinion of this court, the State-respondents in their counter affidavit could not show any justifiable reasons as to how the case of the petitioner regarding fixation of pay scale of the proforma-respondent, Sri Nalini Ranjan Das falls within the purview of F.R. 22(I)(a)(1).

4.19 Now, to deal with the argument advanced by learned G.A. that the instant writ petition is barred by the doctrine of delay and laches, according to this court, there is no merit in the submissions. It is well entrenched principle that *non-granting of legitimate pay scale to an employee is continuing wrong against him which gives rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. As such, the instant writ petition filed by the petitioner is not barred by the doctrine of delay and laches since cause of action arose each time the petitioner was paid his monthly salary on the basis of wrong computation made contrary to rules.*

(emphasis supplied)

4.20 The Hon'ble Supreme Court in ***Tarsem Singh*** (supra) settled the law on this issue as under: [SCC.p.651. para 7]

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

5. Conclusion and direction:

5.1 Learned counsel appearing for the petitioner has urged to pay arrears of salary to the petitioner. In the opinion of this court, it is true that in the instant case, substantial delay has been caused. However, keeping in mind the aforesaid principle, laid down in the ***Tarsem Singh*** (supra), the petitioner is not entitled to arrears of full salary because delay of around 19/20 years would affect the consequential claim of arrears. In this

situation, the relief may be restricted relating to arrears to only 1(one) year prior to filing of the date of writ petition, but, the petitioner will not be entitled to interest.

5.2 In the light of the above analysis on facts and legal issues involved in the instant writ petition and for the foregoing reasons, the State-respondents are directed to re-fix the scale of pay of the petitioner by way of stepping-up/up-grading his pay scale to Rs.10,000-15,100/- w.e.f. 28.03.2000, i.e. the date when the said pay scale was given to the proforma-respondent, Sri Nalini Ranjan Das. Needless to say, all financial benefits, the petitioner is entitled to under the ROP Rules ,1999 and subsequent revision of Pay Rules, should be fixed notionally till the date prior to 1 (one) year of the date of filing of the writ petition. To re-iterate, the relief relating to payment of arrears is restricted to only 1(two) year before the date of filing of the writ petition and such payment would not carry interest.

5.3 The writ petition, accordingly, stands allowed and disposed of in the above terms.

5.4 However, there shall be no order as to costs.

JUDGE