

**HIGH COURT OF TRIPURA
AGARTALA
WA NO.177 OF 2021**

Smt. Aparna Chowdhury Reang,

D/O - Sri Satrunjoy Prasad Chowdhury,

R/O :- Village + P.O-Fulkumari No-2, P.S - R.K Pur, District - Gomati, Pin - 799113.

..... **Appellant(s)**

Vs.

1. The State of Tripura,

represented by the Principal Secretary, Department of Secondary Education, Government of Tripura), New Secretariat Building, New Capital Complex, Kunjaban, PS- New Capital Complex, Agartala, West Tripura, PIN 799010.

2. The Director,

O/O the Directorate of Secondary Education, Govt. of Tripura, Office Lane, Agartala, West Tripura, Agartala, Pin-799003.

3. The Director,

O/O the Directorate of School Education, Govt. of Tripura, Office lane, Agartala, West Tripura, Agartala, Pin-799003.

4. The Secretary,

Department of Finance, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S - New Capital Complex, Agartala, West Tripura, PIN- 799010.

5. Ishanchandranagar Pargana H/S School,

represented by it's Secretary cum School Managing Committee, P.O- Ishanchandranagar, Dist-West Tripura, Dukli Block, Sadar Sub Division, West Tripura, PIN – 799003.

6. The Secretary,

School Managing Committee, Ishanchandranagar Pargana H/S School, PO- Ishanchandranagar, Dist - West Tripura, Dukli Block, Sadar Sub Division, West Tripura, PIN-799003.

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

WA NO.180 OF 2021

Smt. Suparna Deb Roy,

W/O - Sri. Partha Sarathi Ghosh, R/o - Kadamtali,
Krishnanagar, P.O.-Agartala, P.S.- West Agartala, District-West
Tripura, Pin-799001.

..... **Appellant(s)**

Vs.

1. The State of Tripura,

represented by the Principal Secretary, Department of
Secondary Education, Government of Tripura), New Secretariat
Building, New Capital Complex, Kunjaban, PS- New Capital
Complex, Agartala, West Tripura..

2. The Director, of Secondary Education,

O/O the Directorate of Secondary Education, Govt. of Tripura,
P.O.- Agartala, District-West Tripura.

3. Udaipur Ramesh H.S. School,

Represented by the Secretary, Managing Committee, P.O.-R.K.
Pur, P/S- R.K. Pur, District - West Tripura.

4. Teachers Recruitment Board (Tripura),

Represented by its Member Secretary, Govt. of Tripura, P/O-
Agartala, P/S- West Tripura, Dist.: West Tripura.

5. The Secretary-cum-Commissioner,

Finance Department, Govt. of Tripura,
P/O-Kunjaban, P/S -New Capital Complex, Dist. - West Tripura.

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

For the Appellant(s) : Mr. A. Bhaumik, Advocate.
Mr. S. Dey, Advocate.

For the Respondent(s) : Mr. D. Bhattacharjee, G.A.
Mr. S. Saha, Advocate.

Date of hearing and delivery of
Judgment & Order : 02.08.2023.

Whether fit for reporting : YES/NO.

**HON'BLE MR JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH**

JUDGMENT AND ORDER(ORAL)

T. Amarnath Goud(J)

The appellants herein have approached this Court under Chapter VA of the Gauhati High Court Rules read with Article 226 of the Constitution of India assailing the Judgment and Order dated 18th March, 2021 passed in W.P.(C) No.290 of 2020 and WP(C) No.333 of 2019 respectively.

2. The brief fact of these cases are as under:-

2.1. Smt. Aparna Chowdhury Reang, the appellant of WA No.177 of 2021 and petitioner of WP(C) No.290 of 2020 holds the qualification of graduation from Tripura University and a Masters Degree from IGNOU. She was appointed as Assistant Teacher in a private aided school in the higher secondary section for a fixed monthly salary of Rs.2,730/-. Her service conditions would be governed by grant-in-aid code. Her appointment was approved by the Director of School Education, Government of Tripura on 10.09.2004 and the appellant joined the duty on 04.11.2004. Upon completion of 5 years, w.e.f. 04.09.2009 she was brought over to regular pay scales. After 10 years of service, she was granted the benefit of First Assured Career Advancement (ACP) in terms of the Revision of Pay Rules, 2009.

2.2. The Government of Tripura invited applications for the post of Graduate and Postgraduate teachers in Government schools on 27.05.2017. The appellant-herein applied in response to the said advertisement after obtaining no objection from her employer. She was selected and offered an appointment to the post of Postgraduate teacher in English in a Government school on a fixed monthly pay of Rs.22,785/- under an office memorandum dated 30.06.2018. The petitioner accepted such appointment and after rendering her resignation which was accepted by the employer, the petitioner joined the duty on 05.02.2019. Her grievance is that in her new assignment as a Government teacher, her pay has been downgraded. She would point out that as a teacher in grant-in-aid school, she was placed in the regular pay scale prescribed for a postgraduate teacher whereas in her new assignment as a Government teacher, she has been granted salary on fixed pay basis which is much lower than her previous pay. She has, therefore, filed the above-mentioned petition praying that her past service in grant-in-aid school be counted for the purpose of her pay fixation as a Government teacher.

2.3. Smt. Suparna Deb Roy, the appellant of W.A. No.180 of 2021 and petitioner of WP(C) No.333 of 2019, was appointed as a Postgraduate teacher in private but Government aided school

in September, 2011. Her initial appointment was on fixed pay basis. Upon completion of 5 years w.e.f. 23.09.2016 she was granted regular scale of pay. She also applied in response to the Government advertisement dated 27.05.2017 for the post of Postgraduate teacher after obtaining no objection from her employer. She was selected for appointment as a Postgraduate teacher (Philosophy) under an order dated 20.10.2017. After tendering resignation which was accepted by the employer, she joined duty on 27.12.2017. She has also been placed in a fixed salary regime. She would have to wait for 5 years before she was brought over to regular scales.

3. Vide Judgment and Order dated 18th March, 2021, the learned Single Judge dismissed both the petition holding that the appellants are not entitled to the benefit of past service as the appellants had not migrated from a post under the Government. The learned Single Judge also held that Rule 26 is applicable to a Government servant and Rule 26(2) of the CCS (Pension) Rules, 1972 will apply in case of migration from a Government post to another post under the Government with permission from the previous employer.

4. Aggrieved with the aforesaid Judgment and Order dated 18th March, 2021, the appellants have approached this Court to allow these appeals against the impugned Judgment and

Order dated 18.03.2021 passed in WP(C) No.290 of 2020 and WP(C) No.333 of 2019 passed by the learned Single Judge of this Court.

5. Heard Mr. A. Bhaumik, learned counsel assisted by Mr. S. Dey, learned counsel appearing for the appellants as well as Mr.D. Bhattacharjee, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the respondents.

6. Mr. Bhaumik, learned counsel appearing for the appellants submits that the learned Single Judge failed to appreciate that the appellants were earlier employed in a grant-in-aid school and in grant-in-aid school, in the recruitment of teaching faculty, the recruitment rules applicable to the teaching faculty under the State of Tripura is followed. Further learned counsel submitted that the Judgment as relied by the learned Single Judge is not applicable to the facts of these cases.

7. Mr. D. Bhattacharjee, learned G.A. appearing for he State-respondents while countering the argument of the learned counsel appearing for the appellants quoted para-9, 10 and 11 of the Single Bench Judgment dated 18th March, 2021 which is reproduced herein-under:-

"9. The basic philosophy behind formulation of the grant-in-aid scheme is that though the Government has a duty to provide education in primary and secondary level, it may not be possible to cover the entire eligible population for admitting students in Government schools. Instead of setting up such Government schools, the Government would aid private schools and undertake the responsibility of salary and other administrative expenditure for running such a school. In turn, the school would have to adhere to certain

Government policies and guidelines. The teaching and nonteaching staff would have tenure protection against arbitrary terminations. Nevertheless, an employee of a grant-in-aid school is not in Government employment. Such grant-in-aid can be withdrawn after following the procedure under several circumstances such as, the school being mismanaged or not following the directives of the Government. Such situation can also be envisaged where a grant-in-aid school may be shut down if it is found that the management is unable to sustain the school for insufficient number of students studying in the school.

10. 10. The crux of the issue is that the staff of a grant-in-aid school is certainly not in Government employment. A teacher of a grant-in-aid school may have his pay protection as long as he continues in such employment and the school continues to receive grant-in-aid. The teacher may have tenure protection in terms of Rule 9 of Grant-in-aid Rules, however, he is not a Government servant.

11. The request of the petitioners for protection of past service, therefore, must be viewed on this basis. Clause (a) of F.R. 22(I) would cover a case where a Government servant holding a post, other than a tenure post in substantive temporary officiating capacity is promoted or appointed in a substantive temporary officiating capacity. In such a situation, he would have certain pay protection. Clearly this clause applies to a Government servant when he is promoted or appointed on another Government post. Likewise, Rule 26 of the CCS (Pension) Rules pertains to forfeiture of service on resignation. Sub-rule (1) of Rule 26 as is well-known, envisages forfeiture of past service upon a Government servant resigning. Sub-rule (2) of Rule 26 which is in the nature of an exception to sub-rule (1) provides that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission another appointment whether temporary or permanent under the Government where such service qualifies. Rule 26 itself is applicable to a Government servant and sub-rule (2) of Rule 26 would, therefore, cover a case of a Government servant who resigns from one Government post for taking up another Government position with a proper permission of the employer. The Government of India instructions in this respect clarifying this position also, therefore, would not carry the case of the petitioners any further."

Quoting thus learned G.A. submitted that the learned Single Bench appreciated the situation arising in these cases and given the findings contemplated under law.

8. In view of the above findings and observation of the learned Single Judge, this Court is of the opinion that if a grant-in-aid institution follows certain procedures like a Government school, it does not indicate that the employees of that grant-in-aid institution is a Government employee. In terms of the findings, as

given by the learned Single Judge, this Court feels that the impugned Judgment dated 18th March, 2021 stands in the eye of the law and the same is upheld.

9. Accordingly, this present appeals stand dismissed. As a sequel, stay if any stands vacated. Pending application(s) if any also stands closed.

JUDGE

JUDGE

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