

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 630 of 2022

Sri Prasenjit Banik

---Petitioner(s)

Versus

The State of Tripura And Anr

---Respondent(s)

For Petitioner(s)	: Mr. A. Pal, Advocate.
For Respondent(s)	: Mr. R. G. Chakraborty, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

ORDER

03.08.2023

Heard Mr. A. Pal, learned counsel appearing for the petitioner as well as Mr. R. G. Chakraborty, learned counsel appearing for the state-respondents.

This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking the following reliefs:

- (i) Issue Rule calling upon the respondents and each one of them to show cause as to why a Writ of certiorari and/or in the nature thereof, shall not be passed, to call for the records lying with the respondents and thereafter, quashing/setting aside the impugned Memo dated 28.06.2021 bearing reference No.F.1(1-46)-SE/E/(NG)/2018(L-4);*
- (ii) Issue a 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 Memo dated 28.06.2021 bearing reference No.F1(1-46)-SE/E(NG)/2018(L-4) and further direct them to grant the benefit of pension to the petitioner as per Central Civil Services (Pension) Rules, 1972 (as adopted in the State of Tripura) and orders issued thereunder from time to time, as has been extended to the appointees of STGPT-2017 as PGT(Music);*
- (iii) Call for records appertaining to this petition;*
- (iv) In the ad-interim or in/the interim an order directing the respondents to release the accrued monthly salary of the petitioner, with effect from 25.11.2020;*
- (v) After hearing the parties, be pleased to make a Rule absolute in terms of i.ii. and iii above;*
- (vi) Costs of and incidental to this proceeding;*
- (vii) Any other relief(s) as to this Hon'ble High Court may deem fit and proper.*

It is the case of petitioner that the respondents invited online applications for the selection test of Graduate Teacher (STGT) and Post Graduate Teacher (STPGT) through an advertisement No.02/2017 dated

27.05.2017 in local newspapers. The petitioner submitted his application for the selection test within the stipulated period of 28.05.2017 to 09.06.2017 for Post Graduate Teacher in music and was assigned Roll No.622611701320. As per the schedule mentioned in the notification for certificate verification of STPGT 2017, on 30.08.2017, the petitioner submitted all the mark sheets/certificates of academic and professional qualifications including other relevant certificates/documents to the office of the respondent as specified in the notification. The respondents vide notification No.F.2(1-18)GEN/TRBT/REC/2017/1558 dated 16.10.2017, published the names of the selected candidates, wherein it was mentioned that no selected eligible candidate is found in music. The petitioner has presented a writ petition in the month of July, 2019 being WP(C) 859 of 2019 challenging his exclusion from the select list and seeking a direction upon the respondents to recruit him to the post of Post Graduate Teacher in music under the respondents. The Hon'ble High court of Tripura disposed of WP(C) 859 of 2019 on 06.03.2020. Pursuant to the judgment of this court the respondent No.2 issued offer of appointment to the petitioner on 23.07.2020. The petitioner communicated letter of acceptance of offer alongwith objection to condition No.VI on 03.08.2020. On considering of the letter of acceptance and the objection submitted by the petitioner, the respondent No.2 issued posting order on 11.11.2020. As the petitioner was not being paid monthly salary he submitted an application to the respondent No.2 on 25.11.2021 seeking clarification as to whether he is required to execute the undertaking that his pension and other retirement benefits would be guided by the Government and not by CCS(Pension) Rules as he was selected in 2017 through STPGT 2017. The respondent No.2 on 28.06.2021 issued a memo whereby it was decided that the prayer of the petitioner that he does not come under the purview of the New pension

Scheme cannot be acceded to. Aggrieved thereby, the petitioner has approached this court for seeking relief.

Mr. A. Pal, learned counsel appearing for the petitioner has submitted before this court that the present petition has been filed challenging the decision of the State respondents that the petitioner would not fall under the CCS(Pension) Rules, 1972 as adopted in the State of Tripura and formulated in line with the Contributory Pension Scheme announced by the Government of India. It is further submitted that the petitioner was selected in STPGT-2017 and all other recruits of STPGT-2017 to the post of Post Graduate Teacher were given the benefit of CCS (Pension) Rules, 1972 as adopted in the State of Tripura and the petitioner cannot be an exception because the delay caused in recommending the petitioner's name was attributable to the wrong decision taken by the respondents and for the same the petitioner cannot be made liable.

In course of his submission, Mr. A. Pal, learned counsel for the petitioner has also submitted that the respondents are misinterpreting the order dated 06.03.2020 passed in WP(C) 859 of 2019 causing trouble for the petitioner herein and prays for clarification of the same.

Mr. R. G. Chakraborty, learned counsel appearing for state-respondents has submitted before this court that as per the recruitment rules for the post of Post Graduate Teacher in Music, a candidate should have academic qualification of Master Degree in Music, whereas the petitioner possessed Master of Arts in Dance. So the matter of equivalency had arisen. Teacher's Recruitment Board, Tripura referred the matter to the Equivalence Committee to determine equivalency of Master of Arts in Dance to Master of Arts in Music. The Chairman of the Equivalence Committee vide letter No.F.13(1)/GOT/EC?2016/6 dated 15.09.2017 communicated the decision of the Equivalence Committee

stating that Master of Arts in Dance is not equivalent to Master of Arts in Music. Pursuant to the decision of the Equivalence Committee, the petitioner did not possess the required minimum qualification for recruitment to the post of PGT (Music) and the name of the petitioner was not recommended by the TRBT for recruitment to the post of PGT (Music).

In view of the above submission and considering the all aspects of the matter, this court is of the view that the petitioner has made out his case in establishing that the impugned memo dated 28.06.2021 bearing reference No.F1(1-46)-SE/E(NG)/2018(L-4) is an unreasoned one and without application of mind. Accordingly, the memo dated 28.06.2021 is set aside. This court has no hesitation to hold that the interpretation given by the respondent No.2 in the impugned memo interpreting the order dated 06.03.2020 delivered in WP(C) 859 of 2019 by this court, is wrongly interpreted. While referring to the proceeding dated 08.06.2022, the information provided under the RTI Act clearly indicates that 12 posts were assigned for STPGT, 2017. Therefore, it can be said that since sufficient vacancies are available as on the date of consideration, the case of the petitioner, as per the judgment passed in WP(C)859 of 2019, needs to be considered. Furthermore, it also goes without saying that the petitioner is entitled to the pension under the old scheme, i.e. CCS(Pension) Rules, 1972 as adopted in the State of Tripura.

Accordingly, the order dated 06.03.2020 passed in WP(C)859 of 2019 stands clarified for the benefit of the respondents though there is no ambiguity in the order.

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

JUDGE

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