

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO. 651 OF 2022

Sri Sanjoy Sen, son of Sri Anil Chandra Sen, resident of
North Badharghat, A.D. Nagar, P.O. A.D. Nagar,
P.S. A.D. Nagar, District-West Tripura, PIN-799003, age-53 years.

... Petitioner

Vrs.

1. The State of Tripura, represented by its Secretary to the
Department of Science, Technology and Environment, Government of
Tripura, PO-Kunjaban, PS-New Capital Complex, District-West
Tripura, PIN-799006.

2. The Tripura State Council For Science and Technology,
represented by its Member Secretary, Vigyan Bhawan, Gurkhabasti,
P.O. Kunjaban, PS- New Capital Complex, District-West Tripura,
PIN-799006.

3. The Joint Member Secretary, Tripura State Council for Science
and Technology, Vigyan Bhawan, Gurkhabasti, P.O. Kunjaban, PS-
New Capital Complex, District-West Tripura, PIN-799006.

4. The Principal Secretary, Finance Department, Government of
Tripura, Vigyan Bhawan, Gurkhabasti, P.O. Kunjaban, PS- New
Capital Complex, District-West Tripura, PIN-799006.

... Respondents.

PRESENT

For the petitioner	: Mr. Arijit Bhowmik, Advocate.
For the respondent Nos. 1 & 4	: Mr. M. Debbarma, Addl. G.A.
For the respondent Nos.2 & 3	: Mr. D. Bhattacharya, Sr. Counsel. Mr. S. Das, Advocate.

Date of hearing and delivery of Judgment and order	:	16.08.2023
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER(ORAL)

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner. Also heard Mr. D. Bhattacharya, learned senior counsel appearing for the Respondent-Tripura State Council for Science and Technology (for short, TSCST).

None appears for the State-respondents.

2. By means of filing the present petition, the petitioner seeks for following reliefs:

“Under the Circumstances stated above, it is most humbly and respectfully prayed that this Hon’ble Court would be graciously pleased to:

- 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 Petitioner shall not be extended with the regular pay scale w.e.f. the date of completion of 5 years of service on fixed pay basis i.e. 18.12.2017 as per the Memorandum dated 16.10.2007 issued by the Finance Department, Govt. of Tripura along with all service benefits and arrears of financial benefits.*

AND

Issue Rule calling upon the Respondents to show cause as to why the Petitioner shall not be regularized in service along with all service benefits including arrears of service benefits.

AND

Issue Rule calling upon the Respondents to show cause as to why the Petitioner shall not be granted all service benefits of regularization pursuant to the prayers above along with all arrears of financial benefits.

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

AND/OR

Pass any other order/orders as deemed fit and proper by this Hon'ble Court."

3. Facts in brief:

3.1 The petitioner in pursuance of an advertisement dated 26.06.2006, issued by the Tripura University, went for a walk-in-interview for appointment to the post of Junior Project Fellow [for short, JPF]. In terms of the advertisement, this post was a temporary post in the DBT Collaborative Project entitled ***"Hardening of Selected tissue cultured plants and their demonstrations plantation in Tripura"*** for a period of one and half years or till the end of the Project whichever is earlier. The petitioner was selected for the post of JPF. While the petitioner was discharging his duty as JPF under Tripura University a Memorandum of Understanding [for short, MOU] was made in between the Tripura University and the TSCST and in terms of Sub-Clause (v) of Clause 9.0, one Project Fellow was to be transferred to TSCST at the end of first year and in terms of Sub-Clause (viii) of Clause 10.0, TSCST would have the liability to pay remuneration of such Project Fellow during the project tenure. In terms of the MOU, the petitioner under order dated 15th July, 2006 [Annexure-4, page 9 of the writ petition] was deputed to TSCST and he was directed to render service in *Hardening of Selected tissue cultured plants and their demonstrations plantation* in beneficiary houses as Junior Project Fellow. On 01.12.2012, the competent authority of TSCST in consultation with other officials had taken a policy decision under "Note-.4" [Annexure 5, page 12 of the writ petition], which reads as under:

"Out of 15 project personnel, in the year 2007 we could regularize 12 in the post of Scientist/Engineer-B (ref. Para 5 of Note-1). At that time we could not regularize following 3 as there was shortage of posts for regularization:

- i. Smt. Arpita Roy, JRF
- ii. Dr. Barnali Dey, Research Associate
- iii. Shri Sanjay Sen, Project Field Assistant

Subsequently, Smt. Arpita Roy has got offer of appointment in the post of Agriculture officer in the Deptt. of Agriculture, Govt. of Tripura and Dr. Barnali Dey got offer of appointment in the post of Asst. Professor in the Directorate of Higher Education, Govt. of Tripura and they have resigned from TSCST.

At present we have only Shri Sanjay Sen who is rendering service in our council in consolidated honorarium of Rs.5,000/- per month + HRA Rs.600/- with EPF coverage.

Now, we may consider to pay his salary against one of the vacant posts (due to promotion) of Project Officers (carrying Pay Band-4, Pay Band Scale Rs.13,575/- to 37,000/- with GP-3,700) which is UR.

In that case, the said post may be kept in abeyance and against the said post Shri Sen be engaged on fixed pay of Rs.8,000/- per month.”

3.2 It was decided in the said Note that the pay and salary of the petitioner against one of the vacant posts (due to promotion) of Project Officer would be considered and he would be engaged against the said post on fixed pay of Rs.8000/- per month. Accordingly, vide Memorandum dated 15th December, 2012 [Annexure-6, page 27 of the writ petition] the petitioner was engaged as Project Officer on fixed pay basis of Rs.8,000/- per month keeping in abeyance a vacant UR post of Project Officer (carrying Pay Band-4, Pay Band Scale Rs.13,575/- to 37,000/- with GP-3,700). The petitioner had complied with all the terms and conditions mentioned in the said Memorandum dated December 15, 2012(supra). The petitioner had reported his joining and it was accepted under Memorandum dated 02.01.2013 [Annexure-7, page 29 of the writ petition]. The petitioner has brought on record the Recruitment Rules of Project Officer [Annexure-9, page 33 of the writ petition]. Under the said Recruitment Rules, the petitioner has possessed all the essential qualifications to get appointed in the post of Project Officer.

The scale of pay for the post of Project Officer has been mentioned as Pay Band-4, Pay Band Scale Rs.13,575-37,000/- with Grade Pay of Rs.3700/-.

4. Submissions on behalf of the petitioner:

4.1 Mr. Bhowmik, learned counsel appearing on behalf of the petitioner has submitted that the petitioner was appointed under the Tripura University following the normal rules of employment as enshrined under Article 14 and 16 of the Constitution of India.

4.2 There is no quarrel that the appointment of the petitioner was made under a Project. However, this Project is still continuing. While the petitioner had been discharging his duties and responsibilities under Tripura University, a MOU was thereby arrived at between the Tripura University and TSCST pointing out that after completion of one year of service, the Project Personnel would be transferred to TSCST on deputation and their remunerations would be paid by TSCST. Accordingly, the petitioner after completion of one year of service under Tripura University was deputed to TSCST on transfer as JPF. In the year 2012, TSCST authorities had decided to appoint the petitioner as Project Officer since he was working as Project Officer which was a sanctioned post under the TSCST as would be evident from the Recruitment Rules that there are two posts of Project Officers. According to the said policy decision, the TSCST authority had appointed him as Project Officer and accepted his joining under Memorandum dated 02.01.2013 [Annexure-7(supra)] on fixed pay of Rs.8,000/- per month. Mr. Bhowmik, learned counsel has strongly emphasized that since the petitioner has been working as Project Officer for more than a decade, the TSCST authorities are under obligation to regularize his service with regular pay

scales since he was working against a sanctioned post and further, the petitioner has possessed all the essential qualifications to hold the same post.

5. Submissions on behalf of TSCST:

5.1 To confront with the submissions of Mr. Bhowmik, learned counsel appearing for the petitioner, learned senior counsel Mr. Bhattacharya, appearing for the TSCST has submitted that when the petitioner was entered into service as Project Officer, there was no sanctioned post of Project Officer under TSCST. There was no financial concurrence. More so, the post is temporary.

5.2 Relying upon the averments made in the counter affidavit, learned senior counsel has submitted that since there is no regular post having financial concurrence of the Government of Tripura, the claim of regularization of the petitioner cannot be acceded to.

5.3 To support his submission, learned senior counsel has placed reliance upon a decision of the Hon'ble Supreme Court of India in *Civil Appeal No.1951 of 2022*, titled as *The State of Gujarat & Ors. Vrs. R. J Pathan & Ors.*, decided on 24.03.2022.

6. Discussions and decisions:

6.1 Indubitably, the petitioner was first appointed under Tripura University through regular recruitment process as JPF. In terms of a MOU, the petitioner was transferred on deputation to TSCST and in pursuance of a policy decision taken by the competent authorities of TSCST, the petitioner was appointed as Project Officer on fixed pay basis of Rs.8000/- per month with a stipulation that after 5 (five) years he would be provided with regular pay scale applicable for the post of Project Officer. The petitioner reported his

joining and it was accepted by the authority concerned w.e.f. 18.12.2012. Admittedly, since then, the petitioner has been discharging his duties and responsibilities as Project Officer under the TSCST. I have taken note of the submission of learned senior counsel, Mr. Bhattacharya that this post of Project Officer is not a sanctioned post. That gives me to peruse the Memo. dated 4th April, 2007 [*Annexure-X, page 79 of the counter affidavit*] and on reading of the same, it transpires that the Government of Tripura had approved the creation of post for the **Department** and **Bodies** concurred by the Finance Department as indicated under Annexure-I and Annexure-II enclosed to the said Memorandum. Under Annexure-II at Sl. No.25 of the said memorandum, it comes to fore that the Government of Tripura has sanctioned two posts of Project Officers/Scientific (TSCST) in the pay scale of Rs.7,800-15,100/-. From the Memorandum dated 26.04.2023 [*Annexure-Y, page 84 of the counter affidavit*] it is revealed that the Government of Tripura has approved towards continuation of one post of Project Officer with Pay Band-4 in the scale of pay of Rs.15,600-39,100/-, with G.P. of Rs.5,400/- as per ROP, 2017. It is further clear that on inspection of roster Recruitment Rules for the post of Project Officer, provisions have been made for two posts of Project Officer under the said Recruitment Rules [*Annexure-9, page 33 of the writ petition*]. So, there cannot be any quarrel that the post of Project Officer is a sanctioned post having financial concurrence by the appropriate authority.

6.2 In view of this, I cannot agree with the submissions of Mr. Bhattacharya, learned senior counsel appearing for the Respondents-TSCST that the post of Project Officer has no financial concurrence and it was not sanctioned by the Government of Tripura and accordingly, it is repelled.

6.3 I have taken into consideration the decision rendered in ***R.J. Pathan*** (supra). The facts of the case is that the petitioners were claiming regularization against the posts they were working under a Project which was known as “Project Implementation Unit” and the Division Bench of the concerned High Court had directed the Government to create supernumerary post for regularization of their services, which the Hon’ble Supreme Court had interfered with. So, the facts of the present case are wholly different from the facts of ***R.J. Pathan*** (supra).

7. Conclusion:

7.1 Admittedly, the petitioner has been serving as Project Officer for more than 10 (ten) years. Further, it is evident that the post of Project Officer is a sanctioned post having financial concurrence. The petitioner has possessed essential qualification as prescribed under the Recruitment Rules. As such, the TSCST, i.e. the present employer of the petitioner is under obligation to consider the regularization and absorption of the petitioner to the said post of Project Officer. In the instant case, the posting and continuation of the petitioner as Project Officer under the respondent-TSCST is neither irregular nor illegal, rather, the appointment of the petitioner as Project Officer under the TSCST is in accordance with MOU entered into between Tripura University and TSCST under Sub-Clause (v) of Clause 9.0 as stated (supra). The Respondents-TSCST are also liable to pay the pay scale prescribed for the post of Project Officer towards the petitioner as it appears in the Memorandum dated 26.04.2023 [Annexure-Y supra] i.e. in the Pay Band-4, Pay Scale of Rs.15,600-39,100/-, G.P. of Rs.5,400/- as per ROP,2017.

7.2 For the reasons stated and discussed here-in-above, I direct the Respondents-TSCST to complete the process of regularization and absorption of the petitioner to the post of Project Officer within a period of 3(three) months from the date of this judgment and till such process is completed, they are directed to release minimum pay in the regular pay scale to the petitioner as prescribed for the post of Project Officer from the month of August, 2023, which is payable in the month of September, 2023.

With the aforesaid directions and observations, the instant writ petition stands allowed and disposed of.

JUDGE



SAIKAT KAR Digitally signed by SAIKAT KAR
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