

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.674 of 2021

Smt. Rajasree Chakraborty,
wife of Krishnajyoti Bhattacharjee,
resident of village- College Road, Madhyanyapara,
PO & PS- Dharmanagar, District- North Tripura,
PIN- 799250.

---- **Petitioner**

Versus

1. The State of Tripura

represented by the Commissioner & Secretary,
Finance Department, Government of Tripura,
having his office at Secretariat Building, Pandit Nehru Complex,
PO-Kunjaban, PS- New Capital Complex, Sub-Division-
Agartala, District- West Tripura, PIN-799006.

2. The Commissioner & Secretary,

Finance Department, Government of Tripura, having his office at
Secretariat Building, Pandit Nehru Complex, PO- Kunjaban,
PS- New Capital Complex, Sub-Division- Agartala, District- West
Tripura, PIN-799006.

3. The Commissioner & Secretary,

Higher Education Department, Government of Tripura, having his office at
Secretariat Building, Pandit Nehru Complex, PO- Kunjaban,
PS- New Capital Complex, Sub-Division- Agartala, District- West
Tripura, PIN-799006.

4. The Deputy Secretary,

Finance Department, Government of Tripura.

5. The Director,

Higher Education Department, Government of Tripura, having his office at
Secretariat Building, Pandit Nehru Complex, PO- Kunjaban,
PS- New Capital Complex, Sub-Division- Agartala, District- West
Tripura, PIN-799006.

---**Respondents.**

For Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate Mrs. R. Chakraborty, Advocate
For Respondent(s)	:	Mr. D. Bhattacharya, GA Mr. S. Saha, Advocate
Date of hearing and delivery of judgment & order	:	10.03.2023
Whether fit for reporting	:	Yes

HON'BLE MR JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)

By means of filing the present writ petition, the petitioner has challenged the applicability or enforceability of Memorandum dated 1st March, 2021(Annexure 4 to the writ petition) in determining periodical annual increment to the petitioner.

2. Facts:-

2.1. The case of the petitioner, in short, is that she was appointed as an Assistant Teacher under Education Department, Government of Tripura in the year 1982 (24.03.1982). She had been receiving periodical increments as per the erstwhile, Revised Pay Rules, that is, Tripura State Civil Services(Revised Pay) Rules, 2009 (for short, ROP Rules, 2009).

2.2. Abruptly, the concerned Drawing and Disbursing Officer (for short, DDO) changed her increment to 01.01.2018 which is 6(six) months after the usual date (01.07.2017) of grant of annual increment to the petitioner. The

Teacher-in-charge of the concerned School, under communication dated 06.12.2018, addressed to the Director of Secondary Education (Confirmation Section), Government of Tripura, Agartala had sought for removal of the confusion in providing increment as on 1st January, as per Tripura State Civil Services (Revised Pay) Rules, 2017 (“ROP Rules 2017”, for short), on and from 2018. The DDO clarified the position and stated that the pay structure of the petitioner was re-fixed on 1st day of April, 2017 and grant of increment thereof in respect of the petitioner was determined in terms of the *proviso* of the Memorandum dated 1st March, 2021 issued by the Finance Department, Government of Tripura. Since then the petitioner has been drawing annual increment on 01.01.2018. According to the petitioner, change of the date of grant of annual increment from 1st July, 2017 to 1st January, 2018 is a gross irregularity, and hence, seeks interference by this Court to cure the defects correcting the date of grant of annual increment.

3. Heard Mr. Somik Deb, learned senior counsel assisted by Mrs. R. Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. D. Bhattacharya, learned GA assisted by Mr. S. Saha, learned counsel appearing for the respondents-State.

4. Submissions of learned counsel appearing on behalf of the parties:

4.1. Mr. Deb, learned senior counsel for the petitioner has submitted that the Memorandum dated 1st March, 2021 runs contrary to Rule 11 of the ROP Rules,

2017, and therefore, is liable to be quashed. Further contention of the learned senior counsel is that a rule framed under Article 309 of the Constitution of India cannot be amended by way of issuance of executive order and the Memorandum dated 1st March, 2021 is mere executive instruction, which amounts to amendment of ROP Rules, 2017.

4.2. On the other hand, Mr. Bhattacharya, learned GA has contended that restructure of pay of the petitioner and grant of increment thereof has been determined at the instruction of the office of the Accountant General, Tripura. Learned GA has given much emphasis on the *proviso* of Memorandum dated 1st March, 2021 in support of his submission.

5. Analysis:-

5.1. I have given my thoughtful considerations to the submissions advanced by learned counsel appearing for the parties. According to this Court, first question falls for consideration is whether the memorandum dated 1st March, 2021 is liable to be quashed as it runs in contravention to Rule 11 of the ROP Rules, 2017.

5.2. On careful reading of the Memorandum dated 1st March, 2021, in the opinion of this Court, it is not an amendment to Rule 17(2) of the original ROP Rules, 2017. According to this Court, it is a clarification to ROP Rules, 2017 in respect of grant of increment to the employees of the State Government. The memorandum needs to be reproduced, which is as under:

**“GOVERNMENT OF TRIPURA
FINANCE DEPARTMENT**

No.F.7(2) FIN(PC)/2018/1842-2042

Dated 01st March 2021

MEMORANDUM

Subject: Date of next increment under Rule 11(2) of Tripura State Civil Services (Revised Pay) Rules 2017-Clarification regarding.

The undersigned is directed to refer to Rule 11 of the TSCS (RP) Rules, 2017 read with as amendment Rules 2018 which provide for the entitlement of employees for drawal of annual increment either on 1st January or 1st July depending on the date of appointment. Sub-Rule (2) thereof provides that increment in respect of an employee appointed during the period between the 2nd day January and 1st day of July (both inclusive) shall be granted on 1st day of January of the following year and the increment in respect of an employee appointed during the period between the 2nd day of July and 1st day of January (both inclusive) shall be granted on subsequent 1st day of July.

2. Some Government Departments have requested Finance Department to clarify the date of drawal of next increment by the employees appointed between the 2nd day of January and 1st day of July (both inclusive) and between 2nd day of July and 1st day of January (both inclusive). The matter has been examined in details in Finance Department. On consideration the matter, it is clarified as follows:-

- (a) In respect of an employee appointed during the period between the 2nd day of January and 1st day of July (both inclusive), the first increment in the Level applicable to the post shall accrue on the following 1st day of January, and
- (b) In respect of an employee appointed during the period between the 2nd day of July and 1st day of January (both inclusive), the first increment in the Level applicable to the post, shall accrue on the following 1st day of July, as the case may be.

Provided a period of 6(six) months qualifying service is strictly fulfilled. The next increment thereafter shall, however, accrue only after completion of one year.

3. These instructions will be applicable with effect from 01.07.2017.

-sd illegible
(A. Dewanjee)
Deputy Secretary to the
Finance Department”

5.3. The *proviso* at the foot of the above memorandum has created all the problems as regards the date of drawal of next increment in favour of the petitioner.

5.4. On bare perusal of this proviso clearly indicates that it is made for fresh recruits, who are appointed on or after 01.07.2017 (Clause 3 of the Memorandum) and not for the in-service employees whose pay structure and grant of increment were regulated by the erstwhile Revised Pay Rules i.e. ROP Rules, 2009. In the present case, since the petitioner was appointed in the year 1982, fixation and re-fixation of her pay structure and granting of annual increment are naturally regulated by erstwhile pay rules. It will not be regulated by the memorandum dated 1st March, 2021.

In view of this, the Memorandum dated 1st March, 2021 being clarificatory in nature, is not liable to be quashed and the said memorandum should not be interpreted as an amendment to ROP Rules, 2017 as submitted by Mr. Deb, learned senior counsel for the petitioner.

5.5. Now, the question is, whether this memorandum dated 1st March, 2021 issued by the Finance Department, Government of Tripura will be applicable to the case of the petitioner to regulate the grant of increment in her favour.

5.6. I have already observed that the *proviso* as mentioned in the Memorandum dated 1st March, 2021 based on which the DDO concerned being instructed by the office of the Accountant General, Tripura, Agartala, had

changed the date of grant of periodical increment to the petitioner on 01.01.2018 instead of her settled date of drawal of next increment on 1st July of each year as provided under ROP Rules, 2009 is misread and misconstrued by the DDO of the petitioner in regard to the date of grant of increment in favour of the petitioner.

At the cost of repetition, I further re-iterate that the memorandum dated 1st March, 2021 will govern the case of fresh recruitees only, but, it will not be applicable in respect of the petitioner since she is an in-service government employee being appointed in the year 1982 and not a fresh recruitee.

5.7. It is further noticed that memorandum dated 1st March, 2021 has further been clarified by another memorandum dated 3rd June, 2021. It reads as under:

**“GOVERNMENT OF TRIPURA
FINANCE DEPARTMENT
AGARTALA: TRIPURA**

No.F.7(2) FIN(PC)/2018/99-199

Dated, Agartala, the 3rd June, 2021

MEMORANDUM

Subject: Clarification on the scope of allowing increment, after 6 (six) months, to in-service State Government employees who are already in receipt of annual increment prior to implementation of Revised Pay Rules 2017.

Vide Memorandum No. F.7(2)-FIN(PC)/2018 dated 01.03.2021, Finance Department, Government of Tripura has clarified that the State Government employees, who has not got any increment after joining the service/post, shall be entitled to avail the benefit of first increment either on 1st day of July or on 1st day of January of the following year, in pursuance of Rule 11(2) of Revised Pay Rules 2017, subject to strict fulfillment of 6 months of qualifying service. Following these, further clarification has been sought from various corners on whether the in-service government employees who were already in receipt of annual increment as on 1st July of the year as per erstwhile Revised Pay Rules, can also be allowed the benefit of increment, either after 6(six) months or on 1st day of January, as per the Revised Pay Rules, 2017.

2. The matter has been carefully examined in this Department. It is noticed that under erstwhile Revised Pay Rules, the in-service government employees were

already in-receipt of annual increment on 1st day of July as per provisions laid down therein, subject to fulfillment of other conditions. The date of grant of annual increment for the in-service government employees who served the period under erstwhile Revised Pay Rules has been settled on 1st July of the year, So, there is no scope to further revise the date of increment to 1st day of January or to shorter span of 6(six) months afresh, in respect of in service government employee who has already received annual increment on 1st day of July of the year as per erstwhile Revised Pay Rules.

Further, under Para 2(a) and 2(b) of Finance Department's Memorandum of even number dated 01.03.2021, it has been clearly mentioned that the benefit of first increment shall be allowed to the eligible State Government employees under Revised Pay Rules 2017. Since the in-service employees were already in receipt of annual increment under erstwhile Revised Pay Rules. So there is no cause to allow them first increment afresh, after 6(six) months, by overriding the provisions of the respective Revised Pay Rules.

3. All concerned Heads of Departments are, therefore, requested to bring these clarifications to the notice of the concerned DDOs under their respective control and to inform them to check whether any government employee under their respective control has been allowed increment in contravention of the above. If any such case is detected, then action should be taken to correct the fixation of pay and to recover the excess amount drawn by the employee, as per provisions.

-sd illegible

(A. Dewanjee)

Deputy Secretary to the
Government of Tripura
Finance Department

5.8. On perusal of the aforesaid memorandum, and particularly, para 2, it is crystal like clear that in-service government employees who were already in receipt of annual increment on 1st day of July under the relevant provisions of the erstwhile Revised Pay Rules i.e. ROP Rules, 2009, their date of grant of annual increment would be settled on 1st July of the year and there is no scope to further revise the date of increment on 1st day of January. As such, the "Note" dated 10.09.2021 (Annexure-6 to the writ petition) runs in contra to Memorandum dated 3rd June, 2021 resulting gross irregularity and illegality in the fixation of pay structure of the petitioner.

5.9. At para 9 of the counter affidavit, the State-respondents have categorically stated that the grievance of the petitioner had been referred to the Finance Department and after re-examination it was opined that “On perusal of Department’s record, it appears that the petitioner was entitled to annual increment on 1st July of each year under the regime of ROP Rules, 2009. It also appears that after the implementation of ROP, Rules, 2017, her D.N.I was retained at 1st July of each year. But the DDO concerned changed her increment to 01.01.2018 which is six months after 01.07.2017. This appears to be wrong, because increments are to be allowed on annual basis and not on semi-annual basis. If the petitioner has drawn increment on 1st July, 2017, then she would continue to draw her increment on 1st July on the following years. There is no scope to change the increment/pre-pone the increment on 1st January”.

5.10. Thus, it is apparent that the concerned DDO of the petitioner had committed serious error in not taking into consideration the clarifications made in the above quoted Memorandums clarifying Rule 11(2) of ROP Rules, 2017 and the same being ignored, deferred the date of grant of annual increment from 1st July, 2017 to 01.01.2018. Due to this erroneous exercise the petitioner had been deprived of one increment she was entitled to for the year 2017 as it was deferred to 01.01.2018 despite the fact that the date of grant of annual increment in respect of the petitioner was already settled on 1st July of each year as per ROP Rules, 2009 being an in-service employee under the State-respondents.

5.11. Moreso, Clause 3 of the Memorandum dated 1st March, 2021 clearly stipulates that the instructions embodied under the said Memorandum shall be applicable with effect from 01.07.2017, meaning thereby, that Memorandum dated 1st March, 2021 will be operative prospectively without affecting the benefits already accrued by the in-service government employees as regards the date of grant of annual increment.

6. Epilogue:

6.1. Ultimately, it is held that the Memorandum dated 1st March, 2021 being clarificatory in nature is not liable to be quashed and it stands good for the government employees whose pay structures are governed by ROP Rules, 2017, but not for in-service government employees whose pay structures and date of next increment is settled under ROP Rules, 2009.

6.2. Accordingly, it is held that the Memorandum dated 1st March, 2021, particularly, its *proviso*, is not at all applicable to the petitioner in respect of re-fixation of her pay structure and date of grant of annual increment.

6.3. As a sequel, the DDO's note dated 10.09.2021 re-fixing the date of drawal of annual increment on 01.01.2018 stands set aside and quashed. It is made clear that pay structure and grant of annual increment to the petitioner shall be regulated by erstwhile Revised Pay Rules i.e. ROP Rules, 2009.

6.4. The respondents are directed to re-draw the pay structure of the petitioner taking into account the date of drawal of annual increment on the settled date,

i.e. on 1st July, 2017 instead of 01.01.2018 and pay all arrears for the period she was paid increment on wrong consideration and misinterpretation of Memorandum dated 1st March, 2021 and ignoring the Memorandum dated 3rd June, 2021 as quoted in the preceding paragraphs.

The entire process shall be completed within 3(three) months from the date of receipt of a copy of this order.

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

Pending application(s), if any, also stands disposed.



JUDGE

सत्यमेव जयते