

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.861 OF 2021**

Sri Sajal Chakraborty,

S/o. Late Jagadish Chakraborty,

R/o- Ramnagar, Road No.3,

High Court Staff Quarter,

Agartala, West Tripura, Pin-799002,

Age-55 years.

..... **Petitioner(s)**

Vs.

1. The State of Tripura,

(To be represented by the Principal Secretary, Department of Finance, Government of Tripura), New Secretariat Complex, New Capital Complex, Kunjaban, P.S. New Capital Complex, Agartala, West Tripura PIN-799010.

2. The Secretary,

Department of Law, Govt. of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S.- New Capital Complex, Agartala, West Tripura, Pin-799010.

3. The Director,

O/o the Director of Treasuries, Finance Department, Govt. of Tripura, PN. Complex, Gurkhabasti, Agartala, West Tripura, PIN-799006.

4. The Treasury Officer,

Treasury No.II, Finance Department, Govt. of Tripura, Agartala, West Tripura, Pin-799001.

5. The Hon'ble High Court of Tripura,

To be represented by the Registrar General, Hon'ble High Court of Tripura, Lichu Bagan, P.O.- Kunjaban, Agartala, West Tripura, Pin-799006.

6. The Registrar General,

Hon'ble High Court of Tripura, Lichu Bagan, P.O- Kunjaban, Agartala, West Tripura, Pin-799006.

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

For the Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. S. Bhattacharjee, Advocate.
Mr. K. Nath, Advocate.

For the Respondent(s) : Mr. B.N. Majumder, Sr. Advocate.
Mr. A. Bhaumik, Advocate.
Mr. D.J. Saha, Advocate.

Date of hearing : 11.04.2023

Date of delivery of
Judgment & Order : 28.04.2023.

Whether fit for reporting : YES.

HON'BLE THE CHIEF JUSTICE(ACTING)

JUDGMENT AND ORDER

The petitioner herein has filed this present writ petition under Article 226 of the Constitution of India and sought for necessary direction upon the respondents to clear and pass a Bill for an amount of Rs.1,38,950/- towards the payment of charge allowance for the petitioner in terms of the order, dated 25.08.2020, issued by the Registrar General, High Court of Tripura.

2. The brief fact of this present case is that the petitioner is presently serving as Registrar (Admn., Planning & Management) under the High Court of Tripura. The petitioner became Joint Registrar on 06.09.2017. On the retirement of

Saradindu Bhattacharjee, Registrar, .w.e.f. 01.05.2018, there was vacancy in the post of Registrar,(Admn, P&M).

3. During the period from 01.05.2018 to 31.08.2019, the petitioner held the full charge of the Registrar (Admn. P&M) while the petitioner was holding the substantial post of Joint Registrar.

4. The Hon'ble Chief Justice, High Court of Tripura allowed the petitioner to draw charge allowance for holding the full charge of the Registrar(Admn, P&M) for the period from 01.05.2018 to 31.08.2019, in terms of FR-49 read with FR-35. The Registrar General, vide Order, dated, 25.08.2020, conveyed the said decision of the Hon'ble High Court & accordingly ordered that the petitioner will get basic pay without other allowances of the post of Registrar,(Admn P&M) after deducting the basic pay of the post of Joint Registrar drawn by the petitioner at the relevant time. Accordingly, the Due & Drawn statement was prepared and an amount of Rs.1,38,950/- became net payable to the petitioner. Accordingly, Bill No.34, dated 31.08.2020, for Rs1,38,950/- was raised and submitted to the Treasury Officer, Agartala, Treasury No.II.

5. The Deputy Secretary, Finance Department, Govt. of Tripura by Note dated 08.12.2020 returned the Bill on the ground that the Finance Department memorandum dated

24.07.2020 has fixed pay under FR-49 & restricted it to Rs.1500/- per month for Grade-A & Grade-B Officer & Rs.1000/- for Grade-C & Grade-D employees. In the Note, it is stated, that, the memorandum dated 24.07.2020, is applicable to the High Court employees & officiating pay shall be restricted to Rs.1500/- per month.

6. The Registrar Judicial of the Hon'ble High Court of Tripura, vide letter dated 08.12.2020 communicated to the Principal Secretary, Finance Department, whereby referring to Article-229 of the Constitution of India, it is stated that the Hon'ble Chief Justice, is the sole authority under Article 229 of the Constitution of India. It is also stated that the administrative instruction of the Government cannot be enforced upon the High Court. Further, it is stated that, once a budget is appropriated to the High Court & placed at the disposal of the High Court, no approval/sanction from the Finance Department, is at all required. It is also stated that after careful examination done by the Hon'ble Chief Justice in the exercise of power under FR-49 read with FR-35, Sri Chakraborty i.e. the petitioner herein was allowed to be paid the differences of the basic pay of the post of Joint Registrar & higher post of Registrar (Admin P&M) as charge allowance, which is less than 10% of the basic pay is paid as concurrent charge allowance as per Judicial Pay Commission

report accepted by Supreme Court of India & Finance Department, Govt. of Tripura.

7. Even thereafter, the State respondents did not yield & continued to refuse the petitioner's entitlement of charge allowance. Memorandum dated 24.09.2020, issued by the Finance Department providing clarification on the Honorarium for holding full duty charge of the higher post has not been adopted by the High Court of Tripura.

8. Aggrieved thereby, the petitioner has filed this present appeal praying for the following reliefs:-

" i. Issue Rule upon the Respondents to show cause as to why writ in the nature of Mandamus and/or Order/direction shall not be issued whereby quashing and cancelling the letter dated 31.03.2021, issued by the Deputy Secretary, Govt. of Tripura, Finance Department, to the Treasury Officer, Treasury No.II, Agartala, West Tripura.

ii. Issue Rule upon the Respondent to show cause as to why writ in the nature of mandamus and/or order/direction shall not be issued whereby quashing & cancelling the letter, dated, 12.07.2021, issued by the Treasury Officer, Agartala, Treasury No.II to the Registrar(DDO) & Head of Office, High Court of Tripura.

iii. Issue Rule upon the Respondent to show cause as to why writ in the nature of mandamus and/or order/direction shall not be issued whereby quashing & cancelling the letter, dated 17.12.2020, issued by the Treasury Officer, Agartala Treasury No.II to the Registrar(Admn, P&M), DDO & Head of Office, High Court of Tripura.

iv. Issue Rule upon the Respondent to show cause as to why writ in the nature of mandamus and/or order/direction shall not be issued whereby & whereunder, declaring that, memos dated 24.07.2020 & 24.09.2020 issued by the Finance Department Govt. of Tripura have no manner of application so far the grant of charge allowance to the petitioner by Order dated, 25.08.2020, issued by the Registrar General, High Court of Tripura, is concerned.

v. Issue Rule upon the Respondent to show cause as to why writ in the nature of mandamus and/or order/direction shall not be issued whereby directing the state respondents to pass the bill for an amount of Rs.1,38,950/- towards payment of charge allowance to the petitioner in terms of the order, dated 25.08.2020, issued by the Registrar General High Court of Tripura.

vi. Make the rules absolute.

vii. Call for records.

viii. Pass any further order/orders as this Hon'ble Court considered fit and proper."

9. Heard Mr. P. Roy Barman, learned Sr. counsel assisted by Mr. S. Bhattacharjee, learned counsel, and Mr. K. Nath, learned counsel appearing for the petitioner as well as Mr. A. Bhaumik, learned counsel appearing for the State-respondents and Mr. B.N. Majumder, learned Sr. counsel assisted by Mr. D.J. Saha, learned counsel appearing for respondents No.5 and 6.

10. Mr. P. Roy Barman, learned counsel appearing for the petitioner submits that State Government cannot impose any administrative instruction upon the Hon'ble High Court unless it is approved by the High Court. Once a budget is appropriated to the High Court and placed at the disposal of the High Court, no approval/sanction from the Finance Department is required. The State government cannot impose its memorandum on the Hon'ble High Court.

In support of his argument, learned Sr. counsel placed reliance on **Para-10** of the Judgment of the Rajasthan High Court passed in **Subhash Purohit Vs. State of Rajasthan and anr.**, reported in **ALL India SLJ 1994 Vol-1, Page-194** which is reproduced herein under:-

"10. In this constitutional background, the position that emerges is that the expenditures of the High Court have to be charged

upon the Consolidated Fund of the State and even the estimates of such expenditures which shall be charge upon the Consolidated Fund of the State shall not be subject to the vote of the legislative assembly, though it can be debated but such estimates are not subject to the vote of the legislative assembly. The idea behind this constitutional provision is that the High Court should for all purposes be treated as an autonomous body so as to be a watch dog on the two wings of the State i.e. Executive as well as Legislature. If the expenditure of the High Court are subject to the vote of the assembly then the very idea of independent judiciary will loose its sanctity. Thus , keeping in view this constitutional Provision the founding father of our Constitution have accorded a financial autonomy to the High Court and even the fund and the expenditure of the High Court have not been made subject to the vote of the legislative assembly."

11. On the other hand, Mr. A. Bhaumik, learned counsel appearing for the State-respondents submits that the petitioner was appointed as Joint Registrar on promotion vide notification dated 6th September 2017 w.e.f the date of joining. Thereafter, vide notification dated 27.04.2019, Sri Saradinbu Bhattacharjee, Registrar (Administration, Planning & Management) was asked to hand over charge to the petitioner on 30.04.2018. Accordingly, the petitioner held the charge for the post of Registrar (Administration, Planning & Management) w.e.f. 01.05.2018 to 31.08.2019. As per the High Court of Tripura, Services (Appointment, Condition of Service and Conduct) Rules, 2014, the post of Registrar Administration, Planning & Management) is to be filled up by promotion from the post of Joint Registrar, eligibility criteria being two years as Joint Registrar. Therefore the petitioner did not have any eligibility criteria of 2(two) years of service as Joint Registrar.

12. Learned counsel further submits that as per Residuary power of the High Court of Tripura Services (Appointment, Conditions of Service & Conduct) Rules, 2014 i.e. Rule 26(1) of the said Rules, it is clearly stated that '*Nothing in these rules shall be deemed to affect the power of the Chief Justice to make such order from time to time as he may deem fit in regard to all matters, incidental or ancillary to these rules not specifically provided for herein or in regard to the matters as have not been sufficiently provided for.*

Provided, that if any such order relates to salary, allowances, leave or pension of the member of the service, the same shall be made with the approval of the Governor.

In terms of the above rules, the said charge allowance was not approved by the Governor, so the same is not liable to be paid to the petitioner herein.

13. Mr. A. Bhaumik, learned counsel appearing for the State-respondents submits that in the case of ***State of Punjab & anr. Vs. Dharmapal*** reported in ***(2017) 9 SCC 395***, the Hon'ble Apex Court has extended the higher pay scale attached to the higher post subject to those petitioners having the qualifications prescribed by the Rules for the higher post.

Mr. Bhaumik, learned counsel in support of his claim further referred to ***Para-19*** of the Judgment of the

Hon'ble Apex Court reported in **(1998) 3 SCC 72** passed in **High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and anrs**, wherein it is stated that:-

"19. The rule-making power of the Chief Justice is subject to three restrictions:-

(i) If the rules relate to salaries, allowances, leave or pensions, they have to approved by the Governor of the State.

(ii) If the Legislature of the State has made any law, the rules made by the Chief Justice will operate subject to that law.

(iii) If the Governor of the State has, by rule, provided that no person not already attached to the Court, shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission, the Chief Justice while making appointment on such post shall first consult the State Public Service Commission.

Stating thus, learned counsel urged to dismiss this present petition.

14. Heard both sides and perused the evidence on record.

CONCLUSION

15. This Court is of the view that a clear principle needs to be laid down in the question of law as raised in this writ petition.

16. Mr. Bhowmik, learned counsel appearing for State-respondents while mentioning Rule 26(1) of the High Court of Tripura Services (Appointment, Conditions of Service & Conduct) Rules, 2014 submitted that Hon'ble Chief Justice is not empowered to sanction charge allowance to the petitioner herein for the post of Registrar(Admn, P&M) since the same

needs approval of the Governor. But contrary to that if Rule 26(1) of the High Court of Tripura Services (Appointment, Conditions of Service & Conduct) Rules, 2014 is read, it is clearly stated that it *specifically deals in regard to all matters, incidental or ancillary to these rules not specifically provided for herein or in regard to the matters as have not been sufficiently provided for*. But here the post of Registrar(Admn, P&M) is already appropriated. Once appropriated, the State has nothing to say in it. Approval of the Governor is required when a fresh appointment is made because salary and allowances have to be fixed. Here the thing is different, it is not a new sanction, already a person has been working in the said post and because he is not there for some reason or other, his work is given to someone else. Because the petitioner herein is doing double duty, he is eligible for such charge allowance. So the argument of Mr. Bhaumik, learned counsel that the petitioner herein is not eligible for charge allowance on the ground of Rule 26(1) of the High Court of Tripura Services (Appointment, Conditions of Service & Conduct) Rules, 2014 is devoid of merit.

17. Further, learned counsel appearing for the State respondents submitted that the petitioner herein is not eligible to hold the charge of Registrar (Admn, P&M). Here it is

pertinent to mention that the post of Registrar(Admn, P&M) felt vacate from 01.05.2018 to 31.08.2019 and the petitioner herein rendered his service of both Joint Registrar and held the full charge of the post of Registrar(Admn,P&M). So, this Court is of the view that the petitioner rendered additional duties and he is entitled to the said charge allowances. The State has availed his services and now it would be wrong to say that the petitioner herein is not entitled to be paid for such services. Further, here if we apply the boarder aspect of '*equal work equal pay*', this Court is of the view that when a person has rendered his services, and the State has taken his services, now the State cannot say that he is not entitled to such payment.

18. Further it is needless to mention that the administrative order of the Hon'ble High Court will always have an overriding effect over the memorandum of the State and state government guideline until and unless specifically adopted by the Hon'ble High Court, the same is not applicable.

19. So in view of the above discussion and reasoning, this Court is of the view that Rule 26, i.e. the Residuary Power will not apply to this present case. Moreover, applying the principle of '*equal work equal pay*' and having accepted the additional services of the petitioner herein, the State-

respondents is unjust in barring his legitimate right to be paid. Further, the benefits extended by the State-Government in similarly situated cases with regard to the pay of allowances for additional charges cannot be made applicable to the High Court unless it is expressly adopted.

20. In view of the above aspects, the Judgments referred by Mr. Bhaumik, learned counsel also has no relevance to the fact and circumstance of this case.

21. With the above observation and direction, this present writ petition stands allowed and thus disposed of. Stay if any stands vacated. Pending application(s), if any stand closed.

CHIEF JUSTICE (ACTING)

