

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.876/2021

Sri Priyatosh Malakar, son of Sri Paresh Malakar, resident of village & P.O.-Aparaskar, P.S.-Kamalpur, Sub-Division-Kamalpur, District-Dhalai Tripura, PIN-799286.

.....Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary, Education Department, Government of Tripura, having his office at Secretariat Building, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura, PIN-799006.

2. The Commissioner & Secretary, Education Department, Government of Tripura, having his office at Secretariat Building, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura, PIN-799006.

3. The Commissioner & Secretary, Finance Department, Government of Tripura, having his office at Secretariat Building, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura, PIN-799006.

4. The Director of School Education, Education Department, Government of Tripura, having his office at Shiksha Bhawan, Office Lane, P.O.-Agartala & P.S.-West Agartala, Sub-Division-Agartala, District-West Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. K. Debnath, Advocate.

For Respondent(s) : Mr. D. Sarkar, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and judgment : **28th March, 2023.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. K. Debnath, learned counsel appearing for the petitioner. Also heard Mr. D. Sarkar, learned counsel appearing for the respondents-State.

2. This instant writ petition filed by the petitioner under Article 226 of the Constitution of India is directed against the memorandum dated 04.11.2019 issued by the Director of Secondary Education, Tripura to grant all service benefits including pension from the date of his initial appointment.

3. The case of the petitioner, in brief, is that pursuant to a selection process the petitioner got appointment to the post of Constable under the Home Department, Government of Tripura vide memorandum dated 22.05.2015 and joined to the said post on 04.06.2015. Thereafter, on according no objection certificate from Superintendent of Police, North Tripura, Dharmanagar, the petitioner appeared in the selection test for graduate teacher conducted by the Teachers Recruitment Board, Tripura and got selected vide memo dated 12.02.2020 whereafter the petitioner prayed for acceptance of technical resignation which was accepted by the S.P., North Tripura, Dharmanagar and he was released

from the concerned establishment vide order dated 17.02.2020. Meanwhile, the petitioner was appointed to the post of Graduate teacher on a fixed monthly pay and he joined at Kabiguru RSV H.S. School, Dumburnagar on 18.02.2020. Thereafter, on 20.10.2020 the petitioner submitted a representation to the Director of Secondary Education, Government of Tripura with a prayer for reckoning his past services along with other service benefits and the same was forwarded to the concerned authority by the Asst. Headmaster, Kabiguru RSV H.S. School, Gandacherra, despite which no relief was accorded to him. Aggrieved thereby, the petitioner has approached this Court by filing this writ petition. Hence, this case.

4. Petitioner has prayed for 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 issued, for directing them, to transmit the records, appertaining to this writ petition, lying with them, for rendering substantive and conscionable justice to the petitioner, and for quashing/setting aside the impugned Memoranda dated 04.11.2019 (Annexure-6 supra) insofar as it grants a fixed monthly pay to the petitioner, and non-grant of the service benefits, namely, regular pay scale, counting the past services, rendered by him for pay protection, fixation

of pay, leave encashment, leave salary, gratuity and all other admissible service benefits including pension;

(ii) Issue 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, for mandating/directing them, to revoke/rescind the impugned Memoranda dated 04.11.2019 (Annexure-6 supra), and thereupon, mandate/direct the respondents, to grant the service benefits, namely, regular pay scale, pay protection, fixation of pay, leave encashment, leave salary, gratuity and all other admissible service benefits including pension, from the date of initial appointment;

(iii) Call for the records appertaining to this writ petition;

(iv) After hearing the parties, be pleased to make the Rule Absolute in terms of i. & ii. Above;

(v) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper.”

5. Mr. Somik Deb, learned senior counsel assisted by Mr. K. Debnath, learned counsel appearing for the petitioner, contends that the petitioner was granted the benefit of regular pay scale from the very inception and prior to applying for the new post of Graduate teacher, he had taken permission from the competent authority despite which he was appointed to the said post under the School Education Department on a fixed monthly pay basis vide the impugned memorandum dated 04.11.2019. Counsel further contends that it is a settled principle of law

that where a Government servant holding a post in a substantive or temporary or officiating capacity is appointed to a selfsame post of greater responsibility than his previous post, he is entitled to pay protection, more so, when he has submitted technical resignation, his past services cannot be ignored and are liable to be counted. Counsel further contends that on being selected, petitioner joined to the new post after acceptance of technical resignation from his earlier post and so, joining of the petitioner in the second round cannot be treated as a fresh appointment. Accordingly, he prays for quashing the impugned memorandum dated 04.11.2019 issued by the Director of Secondary Education, Tripura whereby he was denied all his past service benefits including pension from the date of his initial appointment.

It is also brought to the notice of this Court by Mr. Somik Deb, learned senior counsel appearing for the petitioner, that the petitioner is entitled for the relief as his case is squarely covered by a decision rendered by this Court on 06.01.2021 in case of ***Tarendra Reang and others vrs. The State of Tripura and others [WP(C)No.234 of 2020 & other connected matters]***.

6. In view of above, without expressing any opinion on merits, the present writ petition is disposed of directing the respondents to

consider the representation dated 20.10.2020 submitted by the petitioner which has been forwarded by one of the subordinates of the respondents by a covering letter dated 07.11.2020, in accordance with law, within a period of three months from the date of receipt of the copy of this order. Petitioner is at liberty to place any further material before the respondents in support of his case before such decision is taken.

7. With the above observation and direction, the writ petition is disposed of.

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

CHIEF JUSTICE (ACTING)

Pulak

