

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) 991/2022**

Aditi Chakraborty, wife of Sri Supriya Chakraborty, resident of 'Mira Villa', Bhattapukur, PO-A.D. Nagar, PS-West Agartala, District-Dhalai Tripura, aged about 52 years.

.....Petitioner

-VERSUS-

- 1. The State of Tripura**, represented by the Commissioner & Secretary, Education Department, Government of Tripura, having his office at Secretariat Building, PO-Kunjaban, PS-New Capital Complex, District-West Tripura, PIN-799006.
- 2. The Commissioner & Secretary**, Education Department, Government of Tripura, having his office at Secretariat Building, PO-Kunjaban, PS-New Capital Complex, District-West Tripura, PIN-799006.
- 3. The Commissioner & Secretary**, Finance Department, Government of Tripura, having his office at Secretariat Building, PO-Kunjaban, PS-New Capital Complex, District-West Tripura, PIN-799006.
- 4. The Director of School Education**, Education Department, Government of Tripura, having his office at Shiksha Bhavan, Office Lane, PO-Agartala, PS-West Agartala, District-West Tripura.

.....Respondents

For Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate Mr. P. Chakraborty, Advocate
For Respondent(s)	:	Mr. M. Debbarma, Addl. GA
Date of hearing & delivery of judgment & order	:	08.09.2023
Whether fit for reporting	:	Yes

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

By means of filing the instant writ petition, the petitioner has prayed for granting her regular pay scale on completion of 5(five) years of service from the initial date of her joining along with other consequential benefits. The petitioner has also challenged the Memorandum dated 22.09.2022 issued by the Director, Secondary Education, Tripura whereby and whereunder the petitioner was denied of getting the benefit of regular pay scale since she did not possess professional qualification i.e. B.Ed as per NCTE norms.

2. Facts:

2.1. In pursuance of an advertisement published on 14.07.2006, the petitioner had undergone a selection process for the post of Post Graduate Teachers(for short, PGT). The petitioner though was found to be eligible, she was not considered for appointment. The petitioner under compelling circumstances had filed a writ petition bearing no.WP(C) 320/2007 before the High Court *inter alia* praying for directing the respondents to issue offer of appointment in her favour. While disposing of the said writ petition, this Court found the petitioner being discriminated and directed the respondents to appoint the petitioner as PGT vide judgment and order dated 24.01.2017(Annexure 1 to the writ petition).

2.2. In pursuance of the said judgment and order, the Director, Secondary Education issued offer of appointment in favour of the petitioner on 27.06.2017 and consequently, she joined her service on 05.09.2017.

2.3. It is pertinent to mention herein that as per policy of the Government, initial appointment of the petitioner was on fixed pay basis for 5(five) years. It is also the policy of the Government that after the expiry of 5(five) years such employees would get the benefit of regular pay scale prescribed for the post he/she holds.

2.4. The petitioner has completed fixed term of 5(five) years on 05.09.2022. She has prayed for granting her regular pay scale prescribed for the post of PGT, but the respondent/Director, Secondary Education under Memo dated 22.09.2022(Annexure 4 to the writ petition) had not acceded to her request for granting regular pay scale on the ground that as per NCTE norms she must acquire professional qualification i.e. B.Ed., which is mandatory for teachers, and the petitioner was requested to acquire professional qualification within 3(three) years from the date of issuance of the said Memorandum dated 22.09.2022. The petitioner has challenged the said impugned Memorandum.

2.5. The petitioner wanted to know through RTI application dated 10.01.2022 as to how her service conditions would be regulated. The reply given by the Information Officer may be extracted hereunder in tabulated form:

<i>Sl. No.</i>	<i>Question</i>	<i>Reply/documents</i>
<i>1</i>	<i>2</i>	<i>3</i>
ii)	Kindly inform the rules, regulations, criteria or pre condition for regularization of service of the Post Graduate Teacher appointed under the Recruitment Rules was in force in the year 2007 and the Recruitment Rules was in force in the year 2017.	As per Memo. No. F.20(3)-GA(P&T)/96 dated 15/12/2001 of the G.A (P&T) Department Govt. of Tripura all Group-C & Group-D posts which are not required to be filled by the selection through the T.P.S.C may be on fixed pay basis & Memo. No.F.10(2)-FIN(G)/05/Part-I dated 16/10/2007 of the Finance Department, Govt. of Tripura “such Fixed pay employees on completion of 05(five) years of service will be provided regular pay scale.”
iii)	Kindly inform the decision/criteria/condition setup by the Directorate for regularization of service of Post Graduate Teacher (Bengali) appointed (vide No.F.1(1-46)-SE/E(NG)/2017 556 dated 27.06.2017) in pursuance of the order of the Hon’ble High Court of Tripura in connection with the case no. W.P(C)-320 of 2007 passed on 24.01.2017.	As per Memo. No.F.20(3)-GA(P&T)/96 dated 15/12/2001 of the G.A (P&T) Department Govt. of Tripura all Group-C & Group-D posts which are not required to be filled by the selection through the T.P.S.C may be on fixed pay basis & Memo.No.F.10(2)-FIN(G)/05/Part-I dated 16/10/2007 of the Finance Department, Govt. of Tripura “such Fixed pay employees on completion of 05 (five) years of service will be provided regular pay scale.”
iv)	Kindly inform said appointment (vide No.F.1-(1-46)-SE-E(NG)/2017-556 dated 27.06.2017) was made on the basis of which recruitment rules and which terms and condition, rules and regulations, condition shall be applicable for regularization of the service.	The appointment was made on the Recruitment Rules No.F.25(1)-E/70(EC) dated 26/01/1971 of this Department. <u>The terms and condition of appointment (vide No.F.1(1-46)-SE-E(NG)/2017-556 dated 27/06.2017) are follows:-</u> 1. The appointment is purely on temporary basis for a period of 1(one) year and will not confer any title to continuation for further period/permanent appointment. 2. The appointment may be terminated at any time by a month’s notice given by either side, namely, the appointee or the appointing authority, without assigning any reason. The appointing authority, however, reserves the right to terminate the services of the appointee forthwith or before the expiration of the stipulated period of notice by making payment of a sum equivalent to the pay and

		<i>allowance for the period of notice or the unexpired portion thereof.</i> 3. <i>The appointment carries the liability with the appointee to serve in any part of the State of Tripura. The appointee should not submit any representation for change of place of posting within a period of 5(five) years</i> 4. <i>Other conditions of service will be governed by the relevant rules and orders in force from time to time.</i> 5. <i>The appointee shall have to undergo any training, if required by the Government. The services of the appointee falling to successful completion of the training even in three chances shall be liable to termination.</i> <i>The condition for regularization of service same as reply number III.</i>
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2.6. The respondents have jointly submitted counter affidavit to the writ petition stating *inter alia* that under NCTE Regulations dated 12.11.2014, and in view of the Recruitment Rules framed by the Government of Tripura vide Notification dated 05.09.2016, the petitioner must possess/acquire professional qualification i.e. B.Ed. for having the benefit of regular pay scale.

3. I have heard Mr. Somik Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the petitioner and Mr. M. Debbarma, learned Addl. GA appearing for the respondents-State.

4. Submissions on behalf of the petitioner:

4.1. Mr. Deb, learned senior counsel has submitted that the plea of the respondents that the petitioner must acquire professional qualification i.e. B.Ed. for getting the benefit of regular pay scale is devoid of merit since the service conditions of the petitioner would be regulated by the Recruitment Rules dated 26.01.1971 and neither under the NCTE Regulation, 2014 nor the Recruitment Rules, 2016 framed by the Government of Tripura. Mr. Deb, learned senior counsel has further argued that the petitioner though was appointed in the year 2017 but that cannot be treated as base year for extending the benefit of regular

pay scale under the Recruitment Rules dated 05.09.2016 since the newly framed rule cannot have retrospective effect to regulate the service condition of the petitioner for the reason that she was supposed to be appointed in the year 2007 when other similarly situated persons were appointed discriminating the petitioner forcing this court to interfere and to pass a direction upon the respondents to appoint her in the post of PGT under the respondents. The next argument of learned senior counsel is that the service conditions of the petitioner would be governed by Recruitment Rules, 1971 where there was no stipulation of having professional qualification i.e. B.Ed. Learned senior counsel has drawn my attention to the RTI reply where it was categorically stated that “as per Memo No.F.10(2)-FIN(G)/05/Part-I dated 16.10.2007 of the Finance Department of Tripura” such fixed pay employees on completion of 5(five) years of service will be provided regular pay scale. Furthermore, in reply to the query mentioned in point no.(iv), it was specifically replied that the appointment of the petitioner was made on the basis of Recruitment Rules No.F.25(1)-E/70(EC) dated 26/01/1971 issued by Secretary, Government of Tripura. It is also stated in the said reply that the appointees, like the petitioner have to undergo training, if required by the Government.

5. Submissions on behalf of the respondents-State:

5.1. On the other hand, Mr. Debbarma, learned Addl. GA has advanced his submissions on the basis of the statements made by the respondents in their counter affidavit. Learned Addl. GA has wholly bent upon the stand taken up by the Director of Secondary Education, Government of Tripura under Memo dated 22.09.2022. Learned Addl. GA has further drawn my attention to the Memo dated 31.12.2022 where ‘No Objection Certificate(NOC)’ was issued in favour of the petitioner for pursuing B.Ed. course within 2(two) years duration in the academic session 2023-24 without hampering normal school duties. However, it is also stated in the said Memo dated 31.12.2022 that the service of the petitioner may be utilized in the morning shift of any school nearby, where her college is situated.

6. I have considered the rival submissions advanced by learned counsel appearing for the parties.

7. Before advertizing to the merit of the case, the question falls for consideration is that whether the NCTE Regulations, 2014 and the Recruitment Rules, 2016 framed by the Government would be applicable to govern the service conditions of the petitioner or whether her service conditions would be regulated by Recruitment Rules, 1971.

8. Now, coming to the merits of the case, in the instant case, it is clear that though the petitioner was appointed in the year 2017 but she was supposed to be appointed in the year 2007 when other similarly situated persons were appointed in the post of PGT under the respondents. The petitioner was succeeded in the selection process but she was not considered to be appointed as PGT under the respondents at that initial point of time. The petitioner was compelled to approach this Court. Upon hearing the learned counsel for the parties, this Court had directed the respondents to appoint the petitioner as PGT vide judgment and order dated 24.01.2017. It is pertinent to mention herein that the petitioner had filed the earlier writ petition in the year 2007 itself which was registered as WP(C) No.320 of 2007. It was no fault of the petitioner that the writ petition had been disposed of in the year 2017. In pursuance to the said judgment and order, the respondents appointed the petitioner as PGT.

9. In the opinion of this Court, in this situation, the service conditions of the petitioner should be governed by the Recruitment Rules, 1971, and not by the Recruitment Rules, 2016. I am in agreement with the submission of learned senior counsel for the petitioner that she was supposed to be appointed in the year 2007 when the Recruitment Rules, 1971 was in force.

10. I have noticed that there is no stipulation of any condition that a teacher must acquire professional qualification like B.Ed. under the Recruitment Rules, 1971. Furthermore, I am not persuaded by the submission of learned Addl. GA that the terms and conditions mentioned in Recruitment Rules, 2016 would be applicable in case of the petitioner for extending the benefit of regular pay scale. The inclusion of possession of professional degree for extending the benefit of regular pay scale has been introduced for the first time under Recruitment Rules, 2016. As such, this service condition under Recruitment

Rules, 2016 will not be applicable in case of the petitioner since it is settled principle of law that the vested right acquired under certain rules cannot be taken away by subsequent rules.

11. Moreover, in the Recruitment Rules, 2016 it is specifically mentioned that the rule will come into force from the date of the notification, which is evident from the NCTE Notification dated 12.11.2014. Similarly, in the notification dated 05.09.2016 framing the Recruitment Rules, 2016 it is categorically stated that the said rule would come into force on the date of its publication in the official gazette.

12. That apart, the selection made in the year 2007 under the advertisement dated 14.07.2006 will not be governed by a subsequent recruitment rules. The conditions of service of the petitioner will be governed by the conditions mentioned in the advertisement published on 14.07.2006 for the post of PGT, under which the petitioner appeared and became successful in the selection process.

13. Learned Addl. GA has failed to justify that the advertisement notification dated 14.07.2006 contained the stipulation of possession of professional qualification i.e. B.Ed. for selection to the post of PGT.

14. In *N.T. Devin Katti & Ors. vs. Karnataka Public Service Commission & Ors., (1990)3 SCC 157*, the Hon'ble Supreme Court has held that *candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not*

retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.[SCC p 165 para 11]

15. Reference may also be taken from the cases of *Gopal Krushna Rath vs. M.A.A. Baig(Dead) by Lrs. & Ors.*, (1999)1 SCC 544 paras 1, 2, 4, 5, 6 and 7; *Public Service Commission, Uttaranchal vs. Jagdish Chandra Singh Bora & Anr.*, (2014) 8 SCC 644 paras 17-28; *Prakash Chand Meena & Ors. vs. State of Rajasthan & Ors.*, (2015) 8 SCC 484 paras 2-10; and *Chandraprakash Madhavrao Dadwa & Ors. vs. Union of India & Ors.*, (1998) 8 SCC 154 paras 50(2) and 50(10).

16. In the instant case, what I find is that the petitioner had undergone through the process of selection in the year 2006 in pursuance of the advertisement published in the year 2006. She made herself eligible and qualified for selection for the post of PGT under the respondents but she was not considered and arbitrarily was deprived of appointment. She filed writ petition where this Court directed the respondents to appoint her in the post of PGT. In such a situation, the appointment of the petitioner in the post of PGT in the year 2017 is inconsequential because she was made herself eligible for selection in the post of PGT in pursuance of the selection process exercised in the year 2006 by the respondents. Had she been appointed in the year 2007 or at least, before the introduction of Recruitment Rule, 2016, the question which has been raised now by the respondents i.e. requirement of professional qualification i.e. B.Ed. would not have been raised.

17. It is clear and explicit that Recruitment Rules, 1971 did not lay down any criteria of possessing of professional qualification i.e. B.Ed. to make a candidate eligible for appointment to the post of PGT. Requirement of acquiring B.Ed. degree has only been incorporated under the NCTE Regulations, 2014 followed by the Recruitment Rules, 2016 framed by the respondents-State, which came into force with effect from the date of their notification. It is not the case here that any amendment of recruitment rules was carried out during the selection process which was exercised in the year 2006.

18. In the above conspectus, in my opinion, the service conditions of the petitioner cannot be governed by the conditions contained in the Recruitment Rules, 2016 issued by the Joint Secretary, Directorate of Secondary Education, Government of Tripura.

19. As a sequitor, the respondent i.e. Director of Secondary Education, Government of Tripura has committed serious error of law in issuing the Memo dated 22.09.2022 asking the petitioner to acquire professional qualification i.e. B.Ed. as a condition precedent to extend the benefit of regular pay scale in favour of the petitioner.

20. Accordingly, the respondents are directed to extend the benefit of regular pay scale to the petitioner with effect from the date she completed 5(five) years of service on fixed pay as per government policy. In other words, the said benefit shall be given to the petitioner w.e.f. 05.09.2022 since the period of 5(five) years fixed pay service was ended on 04.09.2022. The entire exercise shall be completed within a period of 3(three) months from the date of receipt of a copy of this order including the arrears of pay as indicated here-in-above.

21. In the result, the instant writ petition stands allowed in the above terms.

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

JUDGE

Snigdha