

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.34 of 2024**

1. Sri Krishanu Datta, son of Late Manoranjan Datta, resident of Village-79 Tilla, Kunjaban, East Charmari, Agartala, District-West Tripura, aged about 46 years.

2. Sri Nepal Debbarma, son of Late Wakhiroy Debbarma, resident of Village-Sudhari Thakur Para, Sub-Division-Jampuijala, District-Sepahijala Tripura, PIN-799130, aged about 51 years.

3. Sri Subrata Banik, son of Sri Mono Ranjan Banik, resident of Village South Badharghat, Shyamapali, PO-Charipara, PS-Amtali, Sub-Division-Sadar, District-West Tripura, PIN-799003, aged about 39 years.

4. Smt. Debi Deb Das, daughter of Sri Nantu Deb, resident of Village-Sadhutilla, Pratapgarh, PO-Renters Colony, AMC Ward No.42, Agartala, District-West Tripura, PIN-799004, aged about 35 years.

...Petitioners

VERSUS

1. The State of Tripura, represented by the Commissioner & Secretary, Department of Education (School), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division- Agartala, District-West Tripura.

2. The Commissioner & Secretary to the Department of Finance, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

3. The Director, Department of Education (School), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

4. Tripura Board of Secondary Education, an autonomous body, represented by its Secretary, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

5. The Secretary, Tripura Board of Secondary Education, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS- New Capital Complex, Sub-Division- Agartala, District- West Tripura.

...Respondents

WP(C) No.35 of 2024

1. Sri Rupak Goswami, son of Late Rama Prasad Goswami, resident of Village-Santanagar, Badharghat, PO- Siddhi Ashram, Agartala, District-West Tripura, aged about 35 years.

- 2. Sri Pranab Debnath**, son of Late Manindra Chandra Debnath, resident of Village-Dhaleswar, Road No.7 by 13 corner, PO-Dhaleswar, PS-East Agartala, Sub-division-Sadar, District-West Tripura, aged about 39 years.
- 3. Sri Jadab Das**, son of Sri Paresh Das, resident of Village-Gajaria, PO-SD Mission, PS- AD Nagar, Agartala, District-West Tripura, aged about 34 years.
- Petitioners**

VERSUS

- 1. The State of Tripura**, represented by the Commissioner & Secretary, Department of Education (School), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District- West Tripura.
- 2. The Commissioner & Secretary to the Department of Education (School)**, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.
- 3. The Director**, Department of Education (School), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.
- 4. Tripura Board of Secondary Education**, an autonomous body, represented by its Secretary, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.
- 5. The Secretary**, Tripura Board of Secondary Education, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

... Respondents

For the Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate Mr. P. Chakraborty, Advocate Ms. Adwitiya Chakraborty, Advocate
For the Respondent(s)	:	Mr. M. Debbarma, Addl. GA Mr. Ratan Datta, Advocate

HON’BLE MR. JUSTICE ARINDAM LODH

Order

21/05/2024

The above two writ petitions involve similar and identical points of law and facts, and as such, these are taken up and heard together for disposal with the consent of learned counsel appearing for the parties.

2. Heard Mr. Somik Deb, learned senior counsel assisted by Ms. Adwitiya Chakraborty, learned counsel appearing for the petitioners. Also heard Mr. M. Debbarma, learned Addl. GA appearing for the respondents-State and Mr. Ratan Datta, learned counsel appearing for the respondents-TBSE in both the writ petitions.

3. By means of filing the above two writ petitions, the petitioners have prayed for granting regular pay scale in terms of the employment notification dated 24.11.2016(Annexure-1 to the WP(C) No.34 of 2024). WP(C) No.34 of 2024 relates to the petitioners who were appointed as Group-D on fixed pay basis and WP(C) No.35 of 2024 relates to the petitioners who were appointed in the post of Lower Division Clerk-cum-Data Entry Operator on fixed pay basis.

4. It is the plea of the petitioners that in terms of the employment notification dated 24.11.2016 they were initially appointed on fixed pay basis for 5(five) years and it is clearly stipulated in the said notification that after completion of 5(five) years of service on fixed pay basis they would be entitled to get the benefit of regular pay scale prescribed for the respective post against which they were appointed.

5. The petitioners have in the meantime completed 5(five) years of service on fixed pay basis, but, they are not given the benefit of regular pay scales. They approached the respondents by way of submitting representations but those representations were not responded to, compelling them to file the above two writ petitions.

6. In WP(C) 34 of 2024, the petitioners have prayed for the following reliefs:

“(i) Issue Rule, calling upon the respondents and each one of them, to show cause as to why Writ of Certiorari and/or in the nature thereof, shall not be issued for directing the respondents, to transmit the records, lying with them, for rendering substantive and conscionable justice to the petitioners.

(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 forthwith grant the benefit of regularization of the services of the petitioners, and thereupon, grant of regular pay scale, benefit of increment fixation, alongwith arrears thereof, from the respective dates of their completion of five years;

- (iii) *Call for the records appertaining to this petition;*
- (iv) *After hearing the parties, be pleased to make the Rule Absolute in terms of i. and ii. above;*
- (v) *Costs of and incidental to this writ proceedings;*
- (vi) *Any other Relief(s) as to this Hon'ble High Court may deem fit and proper."*

7. I have perused the relevant documents enclosed to the writ petitions as annexures. The employment notification dated 24.11.2016 may be reproduced hereunder:

*"TRIPURA BOARD OF SECONDARY EDUCATION
P.N. Complex, Gorkhabasti, P.O- KUNJABAN, Agartala
Tripura West, PIN-799006*

No. F.2(98)-TBSE/2006

Dated, Agartala the 24th November, 2016

EMPLOYMENT NOTIFICATION

Advertisement No - 01/2016

Applications are invited in prescribed Application Forms from bonafide citizens of India permanently residing in Tripura for selection of candidates for the under mentioned posts.

Item No. 01: *4 (four) posts of Under Secretary (UR-02, ST- 01, SC-01) in the Scale of Pay Rs 13,575-37,000/- Pay Band-4 with Grade Pay Rs. 5,400/or as revised from time to time.*

Type of engagement: On Deputation Basis for a period of 2 years.

Educational Qualification:

Essential: i) Should have passed Master's Degree from any recognized University.

ii) Three years' Administrative/Teaching Experience in a Government Department/PSU/Autonomous Body/ Government Schools/ Government Aided Schools enjoying Grade Pay Rs.4,800/-P.M.

Item No. 02: *07 (seven) regular posts of Lower-Division Clerk cum Data Entry Operator (ST-05, SC-02) on fixed pay basis for five years in the Scale of Pay Rs. 5,700-24,000/-, Pay Band 2 with Grade Pay: Rs. 2,200/-(Group-C), or as revised from time to time.*

Educational Qualification:

Essential: i) Should have passed Madhyamik or its equivalent examination from any recognized Board.

ii) Knowledge of Computer Typing.

Item No. 03: 4 (four) regular posts of Group-D (UR-02, ST- 02) on fixed pay basis for five years in the Scale of Pay Rs.4,840- 13,000/-, Pay Band-1 with Grade Pay Rs.1,400/- (Group-D) or as revised from time to time.

Educational Qualification:

Essential: (i) Class VIII passed, relaxable upto Class V passed for ST/SC/PH candidates. Candidates who have read beyond Class VIII but have not passed Madhyamik will also be eligible.

For prescribed Application form and other important information, the candidates are requested to please visit the TBSE website (www.tbse.in).

The filled in Applications along with Challan will be received on all working days during 20-11-2016 to 14-12-2016 from 11:00 am to 04:00 pm at the office of the Tripura Board of Secondary Education, Gorkhabasti, Agartala.

During submission of Application Form, the candidate need not enclose any self attested certificates, testimonials etc. along with the Application Form. Candidates qualifying in the written examination will be asked to submit all relevant certificates in due course failing which the candidature will be summarily rejected.

*-Sd
DR. S.K. PODDAR
SECRETARY"*

8. During the course of hearing, Mr. Datta, learned counsel for respondents-TBSE has drawn my attention to the counter affidavit filed on behalf of respondents-TBSE(here-in-after referred to as the answering respondents) in response to the above writ petitions. At para (J) of the counter affidavit it is clearly stated that the "*the Petitioners were appointed against the vacant posts. That, thereafter again the Answering Respondents took the initiative for providing regular pay scale to the Petitioners vide fresh file no.F.2(98)-(I)/2006(loose file) and the file was thereafter placed before the Director of Secondary Education on 8.11.2022 for approval.*"

9. In view of such statement made by respondents-TBSE, it is clear that there are posts and there is specific vacancy against those posts. There is no quarrel that the posts were created after financial concurrence. So, it cannot be said that there is no financial concurrence.

10. In spite of that, the plea taken by the answering respondents i.e. TBSE that there is no financial concurrence, cannot be accepted. Mr. Datta, learned counsel for the respondents-TBSE has submitted that a direction may be

given to the Finance Department, Govt. of Tripura to provide necessary financial concurrence for regularization of the petitioners.

11. I do not find any reasonable ground in the said submission since the posts have already been created. Needless to say, the posts were created after getting necessary financial concurrence, which gets support from the submission of Mr. Debbarma, learned Addl. GA for the respondents-State when he contends that the relevant posts were created after getting necessary financial concurrence by the concerned department, so, fresh concurrence is not necessary.

12. In view of the aforesaid discussions, I direct the respondents to extend the benefit of regular pay scale as mentioned in the employment notification dated 24.11.2016 to the petitioners within a period of 2(two) months from today. It is made clear that the service of the petitioners shall be regularized and his pay shall be notionally fixed from the date of completion of 5 years of his service on fixed pay basis in terms of the advertisement.

13. With the aforesaid directions, both the writ petitions stands allowed and thus disposed of.

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

सत्यमेव जयते

JUDGE

Snigdha

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