HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.55 of 2024

Mijanur Rahaman

.....Petitioner(s);

Versus

The State of Tripura & others

.....Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate,
Mr. Dipjyoti Paul, Advocate.

For Respondent(s) : Mr. Kohinoor N. Bhattacharyya, G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

09/05/2024

Petitioner has approached this Court with the following prayer:

> "(i) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to give the benefit of regular pay scale to the Petitioner w.e.f. the date on which the Petitioner completed 5 years Govt. service including the period served by the Petitioner as Graduate Teacher w.e.f. 14.12.2016 to 19.07.2017 and thereafter w.e.f. 20.07.2017 in the post of Post Graduate Teacher on fixed pay basis against the fixed pay posts created keeping in abeyance regular pay scale posts along with ancillary and consequential, pecuniary and non-pecuniary benefits.
> (ii) Make the rules absolute
> (iii) Call for records
> (iv) Pass any further order/orders as this Hon'ble High Court considered fit and proper."

2. The brief facts of the case, as pleaded by the writ petitioner, are referred to hereinafter. Petitioner contended that initially he joined as Graduate Teacher on 14.12.2016 under the Directorate of Elementary Education. Thereafter, petitioner appeared in the STPGT 2016 under TRBT after getting No Objection Certificate from the competent authority. Subsequently petitioner got selected and his technical resignation was accepted. Then he joined in the post of Post Graduate Teacher on 20.07.2017 under the Directorate of Secondary Education. It is submitted that the past service rendered by the petitioner as Graduate Teacher w.e.f. 14.12.2016 to 19.07.2017 was not taken

into consideration while regularizing his service. It is also submitted that petitioner was granted regular scale w.e.f. 20.07.2022 instead of 14.12.2021 without taking into consideration the past service rendered by the petitioner. The Ministry of Personnel, Public Grievances and Pensions, Government of India has also issued an office memorandum dated 17.08.2016 regarding the effect of the technical resignation. The said memo is also adopted in the State of Tripura and it provides that in case of Technical Resignation, the past service of an employee is counted for all purposes. The resignation is treated as technical resignation if the employee has applied through proper channel for a post in the same or some other department and on selection is required to resign from the previous post for administrative reasons. Petitioner contend that similarly situated teachers had approached this Court by filing WP(C) No.722/2022 and vide judgment and order dated 17.03.2023, this Court had directed the department to consider their representations. Thereafter, vide memorandum dated 17.12.2023, three writ petitioners have been granted the benefit of past service. According to the petitioner, the instant case is also covered by the judgment and order dated 06.01.2021 passed in WP(C) No.234/2020 and other batch matters wherein this Court extended benefit of past service to persons appointed to teaching posts from non-teaching posts. The representation made by the petitioner on 15.12.2021 has not yet been acted upon. Therefore, he has approached this Court.

3. Mr. Kawsik Nath, learned counsel for the petitioner, submits that the respondents may be directed to consider the representation of the petitioner in accordance with law and grant the aforesaid benefits. He also relies upon a decision of this Court in the case of ***Tarendra Reang & others v. The State of***

Tripura & others in ***WP(C) No.234 of 2020*** and other batch matters wherein pursuant to the order dated 06.01.2021 passed by this Court, those writ petitioners have been granted the benefit of past service. As such, the respondents may be directed to take a decision in accordance with law in respect of the present petitioner also.

4. Mr. Kohinoor N. Bhattacharyya, learned Government Advocate for the respondents-State, submits that instructions are awaited in this matter. However, since the consideration on this issue at the first instance lies before the competent authority under the department; in case the representation of the petitioner has not been considered on account of enforcement of the Model Code of Conduct, the respondent-department would consider it in accordance with law in a suitable time as may be directed by this Court.

5. Having regard to the nature of relief sought for by the petitioner, since the representation of the petitioner is pending before the concerned respondent authority, this Court without expressing any opinion on the merits of the case deems it proper to direct the competent authority/respondent No.2 to take a decision upon his representation in accordance with law within a reasonable period preferably within 16(sixteen) weeks from the date of receipt of copy of this order.

6. The instant petition is disposed of with the aforesaid observations. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ

Pijush/

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