HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.82 of 2024

Sri Bisnu Sil & others

.....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

Petitioners have 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 petitioners w.e.f. the date on which the petitioners completed 5 years Govt. service including the period served by the petitioner No.1 as Under Graduate Teacher w.e.f. 18.11.2017 to 05.01.2021 on fixed pay basis, the period served by the petitioner No.2 as Under Graduate w.e.f. 18.11.2017 to 30.04.2021 on fixed pay basis and the period served by the petitioner No.3 w.e.f. 01.12.2017 to 28.06.2021 on fixed pay basis and thereafter w.e.f. the date on which they joined in the post of 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) 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 strike down the following condition of the memo dated 19.01.2021, i.e. offer of appointment of the petitioners "Government servant joining service of the State Govt. on or after 01.07.2018 shall not be governed by the existing CCS (Pension) Rule, 1972 and orders issued thereunder from time to time. So far as their pension and other retirement benefits are concerned, they will be governed by a new set of pension scheme."

(iii) 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 that the petitioners are covered by the memo dated 28.11.2018, issued by the Finance Department (Pension Cell), Government of Tripura.

(iv) Make the rules absolute

(v) Call for records

(vi) 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 petitioners, are referred to hereinafter. Petitioners contended that initially they joined as Under Graduate Teachers under the Directorate of Elementary Education w.e.f. 18.11.2017, 18.11.2017 and 01.12.2017 respectively. Thereafter, they appeared in the TET-II 2018 under the TRBT with No Objection Certificate from the competent authority. They were selected and technical resignation tendered by them was accepted by the department. Subsequently, they joined in the post of Graduate Teacher on 06.01.2021, 01.05.2021 & 29.06.2021 respectively under the same department. It is submitted that services of all the petitioners ought to have been regularized w.e.f. completion of 5 years' of service since their initial joining as Under Graduate Teachers which has not been taken care of. It is also submitted that petitioners are entitled to get the benefit of regular scale of pay w.e.f. 18.11.2022, 18.11.2022 and 01.12.2022 respectively along with all consequential benefits. 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. Petitioners 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 petitioners, 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 representations made by the petitioners on 21.11.2022 and 03.01.2024 have not yet been acted upon. Therefore, they have approached this Court.

3. Mr. Kawsik Nath, learned counsel for the petitioners, submits that the respondents may be directed to consider the representations of the petitioners 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 petitioners 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 representations of the petitioners have not been considered on account of enforcement of the Model

Code of Conduct, the respondent-department would consider them 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 petitioners, since the representations of the petitioners are 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 their representations 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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