

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.171 OF 2023

Uttam Kumar Acharya,
Son of Late Gouranga Ch. Acharya,
Resident of Village-Chowmuhani Bazar,
P.O- Suryamaninagar, P.S- Amtali,
District-West Tripura, Pin-799130.

.....Petitioner

Versus

1. The State of Tripura, represented by the
Commissioner & Secretary to the
Finance Department(Taxes & Excise),
Government of Tripura,
New Secretariat Complex,
Gurkhabasti, Agartala,
PO- Kunjaban, PS- New Capital Complex,
Sub-Division- Sadar, District- West Tripura.

2. The Commissioner & Secretary,
Social Welfare & Social Education Department,
Government of Tripura,
New Secretariat Complex Gurkhabasti, Agartala,
PO-Kunjaban, PS-New Capital Complex,
Sub- Division-Sadar, District-West Tripura.

3. The Commissioner of Taxes,
Finance Department(Taxes & Excise),
Government of Tripura,
3rd Floor, Khadya Bhavan, Pandit Nehru Complex,
Gurkhabasti, Agartala,
PO- Kunjaban, PS-New Capital Complex,
Sub- Division-Sadar, District- West Tripura.

4. The Additional Commissioner,
Finance Department(Taxes & Excise),
Government of Tripura,
3rd Floor, Khadya Bhavan,
Pandit Nehru Complex,
Gurkhabasti, Agartala,
PO- Kunjaban, PS-New Capital Complex,
Sub-Division-Sadar, District- West Tripura.

5. The Director,
Social Welfare and Social Education Department,
Government of Tripura,
Malacha, Ujan Abhoynagar,
Sub-Division- Sadar, District- West Tripura.

.....Respondents

For the petitioner(s)	:	Mr. Samarjit Bhattacharjee, Advocate Mr. Koomar Chakraborty, Adv.
For the Respondent(s)	:	Mr. D.C. Saha, Advocate
Date of hearing	:	06.12.2023
Date of delivery of judgment & order	:	22.03.2024
Whether fit for reporting	:	Yes

HON'BLE MR JUSTICE ARINDAM LODH

JUDGMENT & ORDER

The issue falls for consideration in the instant writ petition is *whether the pay of the petitioner should be protected counting his past service rendered by him with effect from 21.02.2005 to 21.10.2013 in the former post of Supervisor(ICDS) under the Social Welfare & Social Education Department, Government of Tripura, pursuant to his subsequent appointment to the post of Inspector of Taxes, Finance Department(Taxes & Excise), Government of Tripura.*

2. Before delving into the above issue, the facts not in dispute and relevant for appreciating the grounds urged in this writ petition are being noted at the outset.

2.1. Initially, the petitioner was appointed to the post of Supervisor(ICDS) on 21.02.2005 under the Directorate of Social Welfare & Social Education Department(SW&SE Department, in short), Government of Tripura on regular basis with monthly pay of Rs.4,200/- in the pay scale of Rs.4,200-120-6,000-130-7,300-150-8,650/- and on such appointment he continued to serve under the SW&SE Department in different places of posting as Supervisor(ICDS) till the year 2012.

2.2. In the year 2012, while he was posted in the office of the Child Development Project Officer(CDPO), Melaghar ICDS Projects, an advertisement vide No.01/2012 dated 01.01.2012(*Annexure 2* to the writ petition) with a subsequent addendum thereto came to be published at the instance of the Tripura Public Service Commission(TPSC, in short) for selection of candidates through Combined Competitive Examination for filling up the vacant Miscellaneous Posts under different Government Departments of the State of Tripura.

2.3. Pursuant to the said advertisement, the petitioner submitted his application to the Director, SW&SE Department through CDPO, Melaghar ICDS Projects praying for granting him permission to participate in the Combined Competitive Examination to be conducted by the TPSC, thereby requesting to issue 'No Objection Certificate' for appearing in the above mentioned examination.

2.4. In response thereto, the Director, SW&SE Department, Government of Tripura vide letter dated 10.04.2012(*Annexure-4* to the writ petition) forwarded the application of the petitioner to the Secretary, TPSC according permission to the petitioner to appear in the said Combined Competitive Examination and accordingly, the petitioner had participated in the selection process.

2.5. Thereafter, being found the petitioner successful in the competitive examination, the Under Secretary, TPSC vide a communication dated 15.06.2013(*Annexure-5* to the writ petition) informed the petitioner that his name has been recommended to the GA(P&T) Department(Nodal Department)

for taking further necessary steps for his appointment to the post of Inspector of Taxes.

2.6. Subsequently, the Commissioner of Taxes, Finance Department (Taxes and Excise), Government of Tripura vide Memo. dated 23.09.2013 issued *offer-of-appointment* in favour of the petitioner for the post of Inspector of Taxes(Group-C, Non-Gazetted) having pay scale of Rs.5,310-24,000/-(PB-2), Grade Pay Rs.2,400/-(*Annexure-6* to the writ petition) with certain terms and conditions as mentioned in the *offer-of-appointment*.

2.7. On his acceptance of such terms and conditions as specified in the *offer-of-appointment*, the Commissioner of Taxes, Finance Department(Taxes & Excise), vide order dated 07.10.2013(*Annexure-7* to the writ petition) appointed the petitioner to the post of Inspector of Taxes.

2.8. In pursuance of the issuance of the said order of appointment, the petitioner tendered his '*technical resignation*' dated 08.10.2013 (*Annexure 8* to the writ petition) to the Director, SW&SE with a prayer for transfer of his service from the SW&SE Department to Taxes and Excise Department and to release him with lien benefits.

2.9. Thereafter, vide letter dated 21.10.2013, the Director, SW&SE Department, accepting the technical resignation released him from the SW&SE Department with effect from the afternoon of 21.10.2013 to join to his new post as Inspector of Taxes in the office of the Commissioner, Taxes & Excise, and accordingly on the same day in the afternoon the petitioner joined to the post of Inspector of Taxes under the Finance Department(Taxes and Excise), Government of Tripura.

2.10. Subsequent thereto, the Child Development Project Officer(CDPO), Melaghar ICDS Projects vide its communication dated 15.11.2013(*Annexure 10* to the writ petition) duly forwarded the Last Pay Certificate(LPC) of the petitioner addressed to the Commissioner of Taxes & Excise stating therein his *last basic pay* as *Rs.12,340/-*.

However, on joining to the post of Inspector of Taxes, the petitioner came to know that his initial *Basic Pay* in the post of Inspector of Taxes has been fixed at *Rs.11,700/-* per month, in the pay scale of *Rs.5,310-24,000/-(PB-2)* having Grade Pay of *Rs.2,400/-*, which is lower than the *Last Basic Pay* he was drawing while serving in his previous employment.

2.11. Having noticed that his *Basic Pay* has been fixed at *Rs.11,700/-*, the petitioner had submitted representation dated 08.06.2016(*Annexure 11* to the writ petition) to the Commissioner of Taxes praying for pay protection and also for fixation of his pay taking into account his past service rendered by him in his previous employment.

2.12. In response to his representation dated 08.06.2016, the Commissioner of Taxes, Government of Tripura vide order dated 18.08.2016 (*Annexure 12* to the writ petition) informed him that the Finance Department, Government of Tripura, concurred his prayer for counting his past service rendered under the SW&SE Department during the period from 21.02.2005 to 21.10.2013 *only for the purpose of pension and pensionary benefits and accordingly his pay was fixed at Rs.11,700/- as per initial pay of the post of Inspector of Taxes w.e.f. 21.10.2013.*

It is the grievance of the petitioner that the order dated 18.08.2016 was silent in regard to pay protection he was entitled to, since on being selected

he tendered his 'technical resignation', which was accepted by his previous employer granting lien benefit.

2.13. Being aggrieved by the decision of the respondents the petitioner submitted another representation dated 08.08.2022(*Annexure 13* to the writ petition) *inter alia* reiterating his earlier prayer for granting pay protection and the said representation was also disposed of by the Commissioner of Taxes vide impugned Memo. dated 20.10.2022(*Annexure 14* to the writ petition) reiterating their stand and thus disallowed his prayer for pay protection.

2.14. The petitioner being aggrieved by and dissatisfied with the decision of the respondents filed the present writ petition in the year 2023 under Article 226 of the Constitution of India *inter alia* praying for the following relief(s):

“(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, quashing/setting aside the impugned Order dated 18.08.2016 & the impugned Memorandum dated 20.10.2022(Annexure-12 & 14 respectively supra);

(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, mandating/directing them, to forthwith revoke/rescind the impugned Order dated 18.08.2016 & the impugned Memorandum dated 20.10.2012(Annexure-12 & 14 respectively supra);

(iii) 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, mandating/directing them, to forthwith count the past services, as rendered by the Petitioner in the former post of Supervisor(ICDS), under the Social Welfare & Social Education Department, Government of Tripura(i.e. w.e.f. 21.02.2005 to 21.10.2013), for the purpose of pay protection as well as for pension & other pensionary benefits, pursuant to his subsequent appointment to the post of Inspector of Taxes, Finance Department(Taxes & Excise), Government of Tripura, and thereupon, & to fix his initial pay in the said post of Inspector of Taxes, Finance Department(Taxes & Excise), Government of Tripura(i.e., w.e.f. 21.10.2013), at par with his last Basic pay of Rs.12,340/-[as drawn in the said

former post of Supervisor(ICDS) including one increment and Grade Pay-Rs.2,400/-, alongwith all consequential benefits, including arrears thereof;

.....”

3. On the aforementioned background facts, I have heard Mr. Samarjit Bhattacharjee and Mr. K. Chakraborty, learned counsel appearing for the petitioner as well as Mr. D.C. Saha, learned State counsel appearing for the respondents.

4. Mr. Bhattacharjee, learned counsel appearing for the petitioner at the very outset argued that the Last Pay Certificate(‘LPC’ for short) issued in respect of the petitioner by the CDPO, Melaghar ICDS Projects clearly stipulates that prior to his joining to the post of Inspector of Taxes *i.e.* as on 21.10.2013, his *last basic pay* was *Rs.12,340/-* per month, but, though on his joining to his subsequent employment through a process of selection, on being permitted by his previous employer and on acceptance of his technical resignation, the Commissioner of Taxes, Government of Tripura most arbitrarily without protecting his pay counting his past service, had fixed his basic pay at *Rs.11,700/-* per month, which is lesser than the last basic pay of his previous employment under the respondent no.5. In view of the above, it was strenuously argued by Mr. Bhattacharjee, learned counsel that the respondents ought to have considered his past service and after protecting his last basic pay ought to have fixed his initial Basic Pay in his subsequent employment, as the petitioner prior to applying for the post of Inspector of Taxes, had obtained due permission and/or ‘No objection’ from the competent authority of the SW&SE Department for participating in the competitive examination. Mr. Bhattacharjee, learned counsel further submitted that in the release order issued by his previous employer it has been clearly stated that the technical resignation tendered by the

petitioner has been accepted by the respondents and the petitioner has been allowed to join to his new post under Finance Department(Taxes and Excise), Government of Tripura, which automatically entitles him to get pay protection and fixation of pay *at par* with his last basic pay of Rs.12,340/-.

4.1. Mr. Bhattacharjee, learned counsel for the petitioner referring to the departmental note received through RTI issued by the Finance Department dated 11.11.2022(*Annexure 15* to the writ petition), contended that nowhere in the contents of the note it was suggested that the Finance Department had ever opined that the pay of the petitioner would be fixed as per initial pay of the post of Inspector of Taxes. Rather the note automatically connotes that the Finance Department accorded pay protection of the petitioner, as otherwise it would have no implication in the pension and pensionary benefits.

4.2. Learned counsel relying upon to Clause (6) of the 'Master Circular' *vis-a-vis* 'guidelines/instructions' circulated through Office Memorandum vide No.28020/2/2018-dated 27.08.2018(*Annexure 16* to the writ petition) issued by the Under Secretary, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), Government of India, contended that in terms of the Fundamental Rules, if a Government servant is subsequently appointed to another post(on acceptance of technical resignation), pay protection would be given to him i.e. in case his pay fixed in the new post is less than his pay in the post he holds substantively, he will be entitled to draw the presumptive pay of the post he holds substantively.

4.3. Mr. Bhattacharjee, learned counsel relied upon the judgment of a coordinate Bench of this court dated 06.01.2021 passed in *WP(C) No.234 of 2020* titled as *Tarendra Reang & Ors. vs. The State of Tripura & Ors.* and

contended that the coordinate Bench of this Court had an occasion to observe that *the entire past service of government servants shall be protected for the purpose of pay and allowances and post retiral benefits, in the case of their appointment to new posts*. Mr. Bhattacharjee, learned counsel referring to the observation made in the judgment referred to *supra* argued with vehemence that *it is impossible to protect the pension of a government servant without protecting his pay*.

4.4. The next argument advanced by Mr. Bhattacharjee, learned counsel was that in a similar circumstance the respondents granted the benefit of pay protection and increment vide order dated 12.08.2008 (*Annexure 17* to the writ petition) to one Sri Ashis Kr. Sarkar who was previously holding the post of Upper Division Clerk in the Department of Fisheries, Government of Tripura and on his subsequent appointment to the post of Inspector of Taxes, since it was noticed that his basic pay in the latter post was lesser than what he was entitled to draw earlier in the former post, the Government of Tripura had fixed his existing pay scale by giving him the next increment.

Arguing the above points, learned counsel for the petitioner prayed for directing the respondents to count the past service of the petitioner for the purpose of pay protection and to fix his initial pay *at par* with his last basic pay of Rs.12,340/-including one increment.

5. *Per contra*, Mr. Saha, learned State counsel disputing the contention of the learned counsel for the petitioner in regard to the ‘Master Circular’(Annexure 16) communicated by the Ministry of Personal, Public Grievances & Pension(Department of Personal & Training), Government of India, argued that the said circular was issued by the concerned department of

the Government of India, which is applicable for the employees of the Central Government and no such instruction regarding applicability of such circular in respect of the employees of the State Government was/is issued so far to follow the same. It was further asserted that the petitioner did not produce/adduce any record or document from which it can be ascertained that the above Master Circular is applicable for the employees serving under the State Government.

5.1. The next argument advanced by Mr. Saha, learned counsel was that the petitioner joined in his subsequent employment through a process of selection against a post which was filled up through direct recruitment conducted by the TPSC following the provisions of the recruitment rules for the post of Inspector of Taxes and it was clearly stipulated in the advertisement published by the TPSC about the pay scale and grade pay of the post, and as such his basic pay was fixed at Rs.11,700/- per month which is the initial basic pay of the post of Inspector of Taxes. The petitioner was well aware of the fact that the post was a direct recruitment post having pay scale as mentioned in the advertisement itself and it would be filled up through a process of selection. Further, since the petitioner having gone through the terms and conditions as specified in the *offer-of-appointment*, more particularly the basic pay, had accepted the same and thereafter joined the post on his appointment, without any demur or protest, now he cannot claim for such pay protection at this stage. In view of the above, there was no illegality on the part of the respondents.

5.2. In respect of the contention of the learned counsel appearing for the petitioner in regard to pay protection and increment thereto granted to one Sri Ashis Kr. Sarkar, it was fairly submitted by Mr. Saha, learned counsel that as the Finance Department allowed pay fixation of Sri Ashis Kr. Sarkar, the same was granted to him in the year 2008 following due procedure of law prevalent at that

time and his case should not be equated in the facts and circumstances with the case of the present writ petitioner. Finally, learned counsel representing the State-respondents urged this Court to dismiss the writ petition.

6. I have gone through the pleadings of the parties and also considered the rival submissions advanced by learned counsel appearing for the parties and also perused the documents enclosed in support of the pleadings made by the respective parties.

6.1. From the pleadings and the submissions of learned counsel appearing for the parties, what is emerged, in a short compass, is that there is no dispute that while the petitioner was serving as Supervisor(ICDS) under SW&SE Department, pursuant to advertisement vide No.01/2012 dated 01.01.2012, he had participated in the selection process with due permission of his employer and got selected for the post of Inspector of Taxes. There is also no dispute that on such selection he was issued *offer-of-appointment* for the said post in the scale of pay of Rs.5,310-24,000/-(PB-2), Grade Pay Rs.2,400/- with certain terms and conditions and on his acceptance of such terms and conditions he was appointed vide order 07.10.2013 asking him to join on or before 23.10.2013. Thereafter, the petitioner prayed for transfer of his service from the SW&SE Department to the Directorate of Taxes & Excise and to release him with lien benefit and in response thereto the Director, SW&SE Department vide Memo. dated 21.10.2013 released him and accordingly on the same day the petitioner joined in the post of Inspector of Taxes. It is also a matter of fact that the CDPO, Melaghar issued LPC of the petitioner stating his last basic pay in his previous employment as Rs.12,340/- but the pay of the petitioner in his subsequent appointment was fixed at Rs.11,700/- by the respondents. To sum up, it is to be noted that in so far as his subsequent appointment is concerned,

there is no controversy in regard to obtaining permission from the competent authority to appear in the selection process, tendering technical resignation with prayer for transfer of service with lien benefit and also joining to his new post without break in service.

6.2. The cause of action for filing the instant writ petition arose, when the initial pay of the petitioner to the post of Inspector of Taxes has been fixed at Rs.11,700/- without protecting his *last basic pay* of Rs.12,340/- and when his representations dated 08.06.2016 dated 08.08.2022 were not considered in true letter and spirit.

6.3. In the instant case, it is revealed that when the question of counting of past service and protection of pay of the petitioner came to arise before the Commissioner of Taxes, the same was referred to the Finance Department, which on due consideration of the case of the petitioner opined that the past service rendered by him as Supervisor(ICDS) during the period from 21.02.2005 to 21.10.2013 will be counted *for the purpose of pension and pensionary benefits only* and accordingly, the Commissioner of Taxes had fixed the pay of the petitioner as per the initial basic pay prescribed for the post of Inspector of Taxes with effect from the date of his joining to his subsequent post. In other words, he was denied of the benefit of pay protection and fixation of pay counting his past service.

For the sake of convenience, I deem it fit to extract here-under the relevant portion of the RTI reply note issued by the Finance Department dated 11.11.2022(*Annexure 15*), which reads thus:

“.....Finance Department concurs with the proposal of the Department for counting the past service rendered by Sri Uttam Kumar Acharya ‘Inspector of Taxes’, as ‘ICDS Supervisor’ under the SW&SE Department during the period

from 21-02-2005 to 21-10-2013 for the purpose of pension and pensionary benefits only.....”

6.4. On perusal of the RTI reply note, it reveals that there is no specific mention in that note as to on what basis or applying to which rules/regulations or government instructions, or otherwise, the Finance Department came to such a conclusion that the past service of the petitioner would be counted only for the purpose of pension and pensionary benefits. *This Court is inclined to note that it was the obligation of the Finance Department to let the employee know the reason based on which rule or statutory instruction they came to such a conclusion.*

6.5. On bare perusal of Clause (6) of the ‘Master Circular’ *vis-a-vis* ‘guidelines/ instructions’(Annexure 16 to the writ petition), it reveals that in terms of the Fundamental Rules, if a Government servant is subsequently appointed to another post(on acceptance of technical resignation), pay protection would be given to him i.e. in case his pay fixed in the new post is less than his pay in the post he holds substantively, he will be entitled to draw the presumptive pay of the post he holds substantively.

For fair ends of justice, it would be proper to reproduce here-under Clause(6) of the Master Circular as under:-

“6. In cases of appointment of a Government servant to another post in Government on acceptance of technical resignation, the protection of pay is given in terms of the Ministry of Finance OM No. 3379-E.III (B)/65 dated the 17th June, 1965 read with provisions of FR 22-B. Thus, if the pay fixed in the new post is less than his pay in the post he holds substantively, he will draw the presumptive pay of the post he holds substantively as defined in FR-9(24). Past service rendered by such a Government servant is taken into account for reckoning of the minimum period for grant of annual increment in the new post/ service/ cadre in Government under the provisions of FR 26 read with Rule 10 of CCS (RP) Rules, 2016. In case the Government servant re-joins his

earlier posts, he will be entitled to increments for the period of his absence from the post.”

6.6. I have also perused the judgment rendered in ***Tarendra Reang(supra)*** which was relied upon by the learned counsel for the petitioner wherein a coordinate Bench of this Court observed that *it is impossible to protect the pension of a government servant without protecting his pay*. While allowing the writ petition filed by Tarendra Reang it was directed in that judgment that *the entire past service of government servants shall be protected for the purpose of pay and allowances and post retiral benefits, in the case of their appointment to new posts*. For the sake of convenience, paragraphs 15 and 18 of the judgment rendered in ***Tarendra Reang(supra)*** are reproduced here-in-below:

*“15. From the above discussion it can be seen that inter departmental migration of the employees is not discouraged, be it the Government of India or the State Government. Specifically Rule 26(2) of CCS (Pension) Rules protects the past service of an employee of the Government even after his technical resignation and joining new post. Though **this is limited for the purpose of pensionary benefits of an employee, it is impossible to protect the pension without protecting his pay.***

*18. Under the circumstances, all the petitions are allowed. In cases where the petitioners were already enjoying pay fixations in regular scales, **their entire past service shall be protected for the purpose of pay and allowances including leave encashment and post-retiral benefits as per their appointments in new posts.** Where the petitioners have not been granted regular pay scales even after completion of 5 years of service, they would be first brought over to regular pay scale from due dates. Upon their fresh engagements as Teachers, their past service similarly shall be protected. It is, however, clarified that none of the petitioners would have any claim of seniority in their new engagements because in the new organization they cannot carry the seniority of the past service so as to jump over the other existing employees in the cadre.*

(emphasis added)

6.7. Rule 26(2) of the Central Civil Services(Pension) Rules, 1972 protects past service of a Government employee, being limited for the purpose of pensionary benefits. Thus, it is practically not possible to protect the pension and pensionary benefits, without protecting the pay. For the purpose of protecting the pension and pensionary benefits of the petitioner, which was purportedly granted vide impugned order dated 18.08.2016(*Annexure 12* to the writ petition), it is very much necessary to first protect the pay and then the question of pension and pensionary benefits will arise. Counting of past service for the purpose of the pension and pensionary benefits would be of an empty formality unless and until his pay is not protected from the initial stage of his subsequent employment.

7. I have also gone through the counter affidavit submitted on behalf of the respondent nos.2 and 5, Social Welfare & Social Education Department and find nothing which controverts the contentions of the petitioner in his writ petition.

8. However, in the counter affidavit filed by the respondents nos.1, 3 and 4, it was stated that the petitioner was appointed to the post of Inspector of Taxes, which is a *direct recruitment* post, through a process of selection and as such his basic pay was fixed at Rs.11,740/- considering the initial pay scale of the post of Inspector of Taxes and on receipt of representation of the petitioner dated 08.06.2016, as a routine manner, the same was referred to the Finance Department for its view/decision and the decision of the Finance Department was communicated to the petitioner vide order dated 18.08.2016 to the effect that '*Finance Department, Government of Tripura concurs his prayer only for pension and pensionary benefits*'. It was, however, pointed out in the affidavit

that from August, 2016 to August, 2022 the petitioner chose to remain silent on the issue of pay protection.

8.1. To controvert the contention in regard to the RTI reply note it was stated by the respondents no.1, 3 and 4 that the Finance Department had only concurred to extend the benefit of his past service to the extent of pension and pensionary benefits and it was their defence that there was no whisper in the RTI reply note in respect of granting the benefit of pay protection.

8.2. In regard to the Master Circular dated 27.08.2018(*Annexure 16*), it was stated in the counter affidavit that the same was issued by the concerned department of Government of India and the petitioner failed to produce/adduce any record or document in support of his claim that the same is applicable for the employees serving under State Government.

8.3. In respect of the contention that a similarly situated employee was given the benefit of pay protection, it was stated in the affidavit that since the Finance Department allowed fixation of pay of that employee, the same was granted to him.

9. On perusal of the Memorandum dated 23.09.2013[*offer-of-appointment*] issued by the Commissioner of Taxes & Excise, Government of Tripura, it comes to light that the petitioner was duly informed that on his appointment his pay scale would be Rs.5310-24000/- with Grade Pay Rs.2400/- in Pay Band-2 and he would be entitled to draw other allowances at the rates admissible, subject to the conditions laid down in rules & orders governing the grant of such allowances in force from time to time and further that other conditions of service would be governed by the relevant rules & orders in force from time to time. In the said memorandum there was a further stipulation that

‘if the petitioner accepts the offer on the terms mentioned in the offer of appointment, he should communicate acceptance together with all necessary certificates/documents to the Commissioner of Taxes & Excise on or before 30.09.2013.’ For the sake of convenience, Memorandum dated 23.09.2013 is reproduced here-under in *verbatim*:

“No.F.IV-2(40)-TAX/11/20634
GOVERNMENT OF TRIPURA
OFFICE OF THE COMMISSIONER OF TAXES & EXCISE
P.N. COMPLEX, GURKHABASTI, AGARTALA.

Dated, Agartala, the 23rd September, 2013

MEMORANDUM

On the recommendation of the Tripura Public Service Commission, **Uttam Kumar Acharya** is hereby offered to the post of Inspector of Taxes in **Pay Band -2, Rs.5310-24000/-** with Grade Pay **Rs.2400/-**. The appointee will also be entitled to draw other allowances at the rates admissible and subject to the conditions laid down in rules and orders governing the grant of such allowances in force from time to time.

2. The terms of appointment are as follows:-

i) The appointment is purely on a temporary basis and will not confer any title to permanent employment.

ii) 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 reasons. The appointing authority, however, reserves the right of terminating the service of the appointee forthwith or before the expiration of the stipulated period of notice by making payment to him an equivalent to the pay and allowances for the period of notice of the un-expired portion thereof.

iii) The appointment carries with it the liability to serve in any part of Tripura.

iv) Other conditions of service will be governed by the relevant rules and orders in force from time to time.

v) The appointee shall be on probation for a period of 2 (two) years from the date of appointment. He shall also be required to undergo such training and pass such examination as may be ordered by the Government.

3. The appointment will be further subject to:

i) Production of a certificate of fitness from the Medical Superintendent, G. B. Hospital / 1.G.M.Hospital/ Sub-Divisional Medical Officer.

ii) Submission of a declaration in the Form enclosed and in the event of the candidate having more than one wife living, the appointment will be subject to his being exempted from the enforcement of the requirement in this behalf.

iii) Taking of an oath of allegiance to the constitution of India in the prescribed form.

iv) Submission of duly filled in ATTESTATION FORM.

iv) Production of the following original certificates-

a) Degree / Diploma / Certificates of educational qualifications.

b) Certificate of age.

c) Character certificate from the two Gazetted Officers of the Central/State Government/ Stipendiary Magistrates in the enclosed form.

d) Discharge certificates of previous employment, if any.

e) Citizenship certificate/PRTC

f) Caste certificate, if any.

g) 3 (three) copies of passport size photographs.

4. It may please be stated whether the candidate is serving or is under obligation to serve another Central Government Department, State Government or a Public Authority,

5. If any declaration given or information furnished by the candidate is found to be false or if the candidate is found to have willfully suppressed any material information, he/she will be liable to removal from service and such other action as Government may deem necessary.

*6. If **Uttam Kumar Acharya** accepts the offer on the above terms, he/she should communicate acceptance together with all necessary certificates/ documents to the Commissioner of Taxes & Excise on or before **30/09/2013** positively. If no reply is received from the candidate by the prescribed date, the offer may be treated as cancelled.*

7. No T.A will be allowed for joining the appointment offered to the candidate

Enclo:- ATTESTATION FORM (Two Sets)

(Brijesh Pandey, IAS)
Commissioner of Taxes
Government of Tripura.

To
Uttam Kumar Acharya
S/O. Sri Gauranga Chandra acharya,
Vill-Chowmoni Bazar,
P.O. SurjyabMoni Nagar,
P.S. Amtali
Dist. Sadar,
Pin-799130."

10. It is a matter of fact that the petitioner being fully aware of the fact that his pay would be fixed in the aforementioned pay scale accepted the said *offer-of-appointment* on his own volition and on such acceptance the Commissioner of Taxes vide order dated 07.10.2013 appointed the petitioner, wherein also certain terms and conditions were stipulated and one such condition was that **his pay would be fixed as per rules**. It would be apposite to extract the relevant part of the appointment order dated 07.10.2013, for convenience:

"ORDER

*On the recommendation of the Tripura Public Service Commission and as per terms and condition mentioned in the offer of appointment the following candidates are hereby appointed on probation to the post of Inspector of Taxes at **Basic Pay Rs.11,700/-**(Rupees Eleven thousand and seven hundred) only per month in the **Pay Band-2, Rs.5310-24000/-** with Grade Pay **Rs.2400/-** plus other allowances as admissible under the rules in force in Tripura from time to time with effect from the date of their joining the post.*

1. Sri Saikat Acharji
2. Sri Mithun Kanti Roy
3. Sri Abhijit Biswas
4. Sri Saurav Das
5. Sri Priyankar De
6. Sri Sandip Bhattacharjee
7. SriRaghunath Bhattacharjee
8. Sri Uttam Kumar Acharya
9. Sri Upam Bikash Chakma
10. Sri Manto Kalai

2. *The appointment is purely temporary and the appointee may be terminated at any time on one month's notice from either side.*
3. *The appointees shall remain on probation for a period of 2 (two) years with effect from date of joining the post*
4. *The appointment is made against the existing vacancies of organization.*
5. ***The appointees pay will be fixed as per rules.***

.....”

11. On bare perusal of the aforesaid appointment order, it is noticed that said order stipulates one of the most important conditions that the fixation of pay would be as per rules. There should not be any quarrel that the petitioner's service unless regulated by any specific rules in general or in particular, provisions of Fundamental Rules would apply to create right in favour of the petitioner. At this juncture, the Fundamental Rules 22(1) comes on to play which provides regulation of the initial pay of a Government servant appointed to a post on time-scale of pay. The Fundamental Rule envisages different situations where a Government servant holding one post on substantive or temporary basis is promoted or appointed in a substantive, temporary or officiating capacity in some other post. It primarily envisages protection of past pay on new engagement. It would be apposite to extract here-under the relevant provisions under F.R. 22(1), thus:

“F.R. 22(1) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-

(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or promoted in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only, whichever is more.

Save in cases of appointment on deputation to an ex- cadre post, or to a post on ad hoc basis or on direct recruitment basis, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be

refixed in accordance with this rule on the date of accrual of the next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment.

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or rupees one hundred, whichever is more ;”

11.1. It is not in dispute that the Fundamental Rules(Central Rules of 1922) is in force in the State of Tripura with effect from 21.01.1972[adopted with modification by the Government of Tripura vide Finance Department Order No.F.1(1)-FIN(G)/72 dated 21.01.1972].

(emphasis supplied)

11.2. A Coordinate Bench of this Court in the case of *Khokan Debnath vs. State of Tripura & Ors.* reported in (2018) 1 TLR 175 held and observed that FR.22(1)(a)(1) is not only confined to regulation of pay scale of Government servant on ‘*promotion*’ but the same would also apply in case of his ‘*appointment*’ on a post different from one he was previously holding the Government. Relying upon the decision rendered in *Khokan Debnath(supra)*, a learned Single Judge of this Court (A. Kureshi, CJ, as he then was) in the case of *Tarendra Reang(supra)* addressing the issue of pay protection held thus:

“[8] Government of India had issued certain instructions under FR.22, one such instruction dated 17th June, 1965 reads as under:

“(9) Condonation of resignation for purposes of fixation of pay- The question whether the benefit of past service for purposes of fixation of pay can be given to a Government servant who resigns his post before taking up appointment in the new post in the same or another Department, has been

under the consideration of the Government of India. Normally, the benefit of past service is given only in those cases where such service has not been terminated by resignation/dismissal. The President is, however, pleased to decide that in cases where Government servants apply for posts in the same or other Departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes for fixation of pay in the new post treating the resignation as a „technical formality“. The pay in such cases may be fixed under FR.27.”

[9] Under instructions dated 22nd January, 1993 it was further clarified as under:

“ * **

A question has now been raised as to whether the above benefit is admissible to Government servants who applied for posts in the same or other Departments before joining Government service and on that account the application was not routed through proper channel. The matter has been examined and it is now decided that the benefit of past service subject to the same conditions as incorporated in O.M., dated 17-6-1965 above, may be allowed in such cases also, subject to the fulfilment of the following conditions:-

- (i) the Government servant at the time of joining should intimate the details of such application immediately on their joining;*
- (ii) the Government servant at the time of resignation should specifically make a request, indicating the dates that he is resigning to take up another appointment under the Government/Government Organization for which he applied before joining the Government service and that his resignation may be treated as „technical“ resignation;*
- (iii) the authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel.”*

[10] As per the said instructions dated 17th June, 1965 thus, Government of India had taken a conscious decision that a Government servant who resigns from his post in the same or other departments through proper channel and joins another post on selection after resigning from his previous post, the benefit of past service, if otherwise admissible under the rules, will be given for the purpose of fixation of pay in the new post “treating the resignation as a technical formality”. It is from these instructions perhaps that the term “technical resignation” has gained

currency. Likewise under the instructions dated 22nd January, 1993 even in a case where a Government servant takes up another appointment in another department but for which his application for selection was not routed through proper channel, the past service would be protected subject to certain conditions. Both these instructions thus clearly manifest the intention of the Government of India not to deter or discourage interdepartmental migration of employees.

[11] As pointed out by the counsel for the petitioners, a reference also must be made to the Central Civil Services (Pension) Rules, 1972 [“CCS(Pension) Rules” for short] which have been adopted by the State of Tripura under a notification dated 8th August, 1978. Rule 26 of CCS(Pension) Rules pertains to forfeiture of service on resignation. Relevant portion of this rule reads as under :

“26(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.”

[12] As is well known, simple resignation leads to forfeiture of past service. The Courts have clearly distinguished between resignation and voluntary retirement. However, as specified in sub-rule (2) of Rule 26 of CCS(Pension) Rules, a resignation shall not entail forfeiture of past service if it is submitted to take up another appointment under the Government with proper permission. As noted, the term technical resignation is not reflected in the rules, however, by virtue of Government of India’s instructions, noted above and in the context of sub-rule (2) of Rule 26 of CCS(Pension) Rules the same has gained a certain well known connotation. It conveys a situation where a Government servant takes up another post under the Government for which his parent department has shown willingness and to join the new post, he has to resign from his past service.”

12. Again the concept of technical resignation has further been clarified by an Office Memorandum, dated 27.08.2018 of the Ministry of Personnel, Public Grievances & Pensions, Government of India where it is stipulated that a

resignation will be treated as technical resignation only upon satisfaction of twin conditions and the two conditions are, firstly, a Government servant has to apply through proper channel for the post in the same or some other department and secondly, the Government servant on selection is required to resign from the previous post for administrative reasons. When these twin conditions are fulfilled, then only the benefit of past service can be given, if otherwise admissible.

13. Added to what has been discussed here-in-above as regards the established Rules governing the pay protection of a Government employee, I may profitably refer to a decision of the Apex Court in the case of ***Jagdish Parwani vs. Union of India & Ors.*** reported in (2018) 15 SCC 591 wherein it was categorically held that *pension is continuing cause of action while issue of pay protection arises as soon as employee joins new post and whatever is granted would depend on operating rules/regulations/notification, etc. governing field.* Paragraphs 20 and 21 of ***Jagdish Parwani***(supra) reads thus:

“20. The counsel appearing for the appellant however sought to submit that to deny the benefit of the Notification dated 28-2-1992 to the appellant was discriminatory in nature and in support of the said contention the counsel relied on the decision of this Court in *T.S. Thiruvengadam v. Union of India (Ministry of Finance)* [*T.S. Thiruvengadam v. Union of India (Ministry of Finance)*, (1993) 2 SCC 174 : 1993 SCC (L&S) 495 : (1993) 24 ATC 102] . In our considered opinion the ratio of the aforesaid decision was rendered in respect of a case of pension which is a continuing cause of action. Facts of the said case are clearly distinguishable from the facts of the present case and, therefore, the ratio of the said decision is not applicable to the case in hand.

21. **There is an inherent clear distinction between the two concepts of pay protection and pension. So far as getting pay protection is concerned, the said issue arises as soon as an employee joins his new post, where he gets his new pay scale and if he is entitled to any pay protection that is the stage and date when it is granted by whatever notifications, memorandums which are available and applicable at that stage laying down such rules regarding pay protection.** At that stage what was operating in the field was the Notification

issued on 7-8-1989 which was not applicable to the appellant. The appellant also clearly understood the position and therefore based his entire claim and right on the subsequent Notification dated 28-2-1992, although appointed to the post of the Central Government on 23-2-1990.”

[emphasis added]

14. What emerges on a cumulative consideration of the aforesaid Rules, and the judgments occupying the field in the present case *vis-a-vis* the principles therein is that the simple resignation leads to forfeiture of past service; however, it shall not entail forfeiture of past service if prior to participation in the selection process for appointment to another department/service under the Government, the concerned employee obtains proper permission from his previous employer in view of the provision embodied in Sub-Rule(2) of Rule 26 of CCS(Pension) Rules.

14.1. *Again, from the Rules quoted here-in-above relating to the subject in issue and Office Memorandums issued time to time clearly suggest that the intention of the Government is not to deter or discourage but to promote or encourage a Government employee to open better avenues and to look for better job opportunities. Now, it is settled proposition that before appearing in the selection process if an employee seeks permission and the employer issues “no objection certificate” allowing such employee to appear in the selection process to any other department/service of the Government, then, resignation submitted by such employee at the time of joining in the second service, would be treated as ‘technical resignation’ and in that case, there is no forfeiture of past service and his pay would be protected under the second employment.*

(emphasis supplied)

14.2. In the instant case, admittedly, the petitioner being a Government servant under the respondent No.5 had sought for permission for submitting

application for appointment in another department. The said application routed through proper channel. Thereafter, the respondent No.5, i.e. the previous employer of the petitioner forwarded the same to the Secretary, Tripura Public Service Commission according permission to the petitioner to appear in the Combined Competitive Examination. The petitioner was selected and after receipt of the appointment order issued by the respondent No.3, at the time of joining to the department of respondent No.3, i.e. Commissioner of Taxes, he tendered his resignation. In this circumstance, petitioner's resignation is to be treated as "technical resignation". It is a mere technical formality required for administrative reasons. Since it is a mere formality, the past service benefits including his last basic pay under his previous employer, i.e. respondent No.5 are protected and shall be provided by his subsequent employer, i.e. the respondent No.3.

14.3. Thus, the stand of the respondents that the petitioner knowing fully well about the pay scale mentioned the advertisement applied for the post, and on his selection accepted the *offer-of-appointment* with full knowledge in respect of pay scale, etc., and that he is not entitled to pay protection, in the opinion of this Court, are not tenable in law for the reasons that **neither the recruitment rules nor the offer-of-appointment can override the service rules, regulations and statutory provisions**. Even otherwise, the advertisement/offer-of-appointment, though specifically mentioned that the appointee would be placed under the initial pay scale for the post, but the same never clarified that even if the rules and regulations so provide, the past service of a Government servant having upper pay scale would be wiped out.

14.4. Pertinently, in the case in hand, no such rule placed on record by the respondents denying the benefit of past service for the purpose of fixation of

pay in the new post the petitioner had joined after the observance of all necessary formalities as discussed in the preceding paragraphs.

15. Since principal issue regarding the benefit of providing past service the petitioner had rendered under the previous employment is decided in favour of the petitioner, in my considered view, other arguments advanced by learned counsel appearing for the parties need no further discussion.

16. In view of the above discussions on facts and law, it can safely be held that the petitioner is entitled to get the benefit of pay protection for the service rendered by him in his previous employment. The impugned order dated 18.08.2016 and the impugned memorandum dated 20.10.2022 are hereby set aside and quashed. The respondents are directed to fix initial pay of the petitioner at par with his last basic pay of Rs.12,340/- alongwith all consequential benefits, including arrears as per law within a period of 6(six) months on receipt of a copy of this judgment and order.

17. The instant writ petition, accordingly, stands allowed and thus disposed of.

JUDGE