

IN THE HIGH COURT OF TRIPURA
A G A R T A L A

W.A. No.30 of 2023

W.A. No.53 of 2023

In W.A. No.30 of 2023

Sri Pinaki Samanta,

son of Sri Jogendra Chandra Samanta, Tripura
Police Service, resident of Ramkrishna Ashram
Road, Town Bordawali, PO-Agartala, PS-West
Agartala, District-West Tripura, Pin-700001;

..... Appellant

By Advocate :

Mr. S. Deb, Sr. Adv.

Mr. P. Chakraborty, Adv.

- V e r s u s -

1. **The State of Tripura,**
represented by the Secretary & Commissioner,
Department of Finance, Government of Tripura,
having his office at New Secretariat Complex,
Gorkhabasti, Agartala, PO-Kunjaban, PS-New
Capital Complex, Sub-Division-Sadar, District-
West Tripura.
2. **The Deputy Secretary,**
Department of Finance (Establishment Branch),
Government of Tripura, having his office at New
Secretariat Complex, Gorkhabasti, Agartala, P.O-
Kunjaban, P.S-New Capital Complex, Sub-
Division-Sadar, District-West Tripura.
3. **The Commissioner & Secretary,**
GA (P&T) Department, Government of Tripura,
having his office at New Secretariat Complex,
Gorkhabasti, Agartala, PO-Kunjaban, PS-New
Capital Complex, Sub- Division-Sadar, District-
West Tripura.
4. **Smt. Sarmistha Laskar (Das),**
34, Azad Hind Road, Dhaleswar, Agartala, P.O.
Dhaleswar, PS-East Agartala, Sub-Division-
Sadar, District- West Tripura. [The **Next-of-kin,**
Legal Heir and W/o Late Nalini Ranjan Das,
[Ex-Officer of Tripura Police Service];

..... Official Respondents

.....Proforma Respondent

By Advocate :

Mr. M. Debbarma, Addl. GA

In W.A. No.53 of 2023

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

..... Appellants

By Advocate :

Mr. M. Debbarma, Addl. GA

- Versus -

- 1. Sri Pinaki Samanta,**
son of Sri Jogendra Chandra Samanta, Tripura
Police Service, resident of Ramkrishna Ashram
Road, Town Bordawali, P.O-Agartala, P.S-West
Agartala, District-West Tripura, Pin-700001;

.....Respondent

- 2. Smt. Sarmistha Laskar (Das),**
34, Azad Hind Road, Dhaleswar, Agartala, P.O.
Dhaleswar, PS-East Agartala, Sub-Division-
Sadar, District-West Tripura. [The Next-of-kin,
Legal Heir and W/o Late Nalini Ranjan Das, Ex-
Officer of Tripura Police Service].

.....Proforma Respondent

By Advocate :

Mr. S. Deb, Sr. Adv.

Mr. P. Chakraborty, Adv.

Date of hearing & delivery
of Judgment & order : **2nd July, 2024.**

Whether fit for reporting :

YES	NO
√	

**HON'BLE THE CHIEF JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

Heard Mr. S. Deb, learned senior counsel appearing for the writ petitioner-appellant in WA No.30 of 2023 and for the respondent in WA No.53 of 2023. Also heard Mr. M. Debbarma, learned Addl. GA appearing for the State-respondents in WA No.30 of 2023 and for the State appellants in WA No.53 of 2023.

[2] Both the appeals having arisen out of a judgment dated 20.02.2023 passed in WP(C) No. 426 of 2021, have been heard together and are being disposed of by this common judgment.

[3] The short question falls for consideration in both the appeals is whether grant of two different pay scales to two different employees working in the same post-one appointed by direct recruitment and another by way of promotion is permissible at law especially when the senior is getting lower pay scale than his junior.

[4] The writ petitioner namely, Pinaki Samanta was directly appointed to the post of Tripura Police Service (Grade-II), [TPS Grade II in short], by way of direct recruitment on 31.10.1998 in pre-revised pay scale of Rs.2100-3000-5000/-, as was admissible under Tripura Civil Services (Revised Pay) Rules, 1988. Thereafter, Tripura State Civil Services (Revised Pay) Rules, 1999 (for short, ROP Rules, 1999) came into force with retrospective effect from 01.01.1996. As per ROP Rules 1999, the pay scale admissible to direct recruitee in the said grade was revised to Rs.7800-15100/- and accordingly, the pay of the writ petitioner was fixed in the said scale.

[5] Subsequently, on 28-03-2000, one Nalini Ranjan Das (now deceased), the husband of the proforma-respondent was promoted to said post of TPS (Grade-II) from the feeder post of Inspector of Police.

[6] The ROP Rules, 1999 provided a higher pay scale of Rs. 10,000-15,000/- at the initial entry for the promotee TPS (Grade-II) officers and accordingly, pay of said Nalini Ranjan Das was fixed in that scale. According to writ petitioner, he was not aware of such higher fixation of pay of his junior and at a much later stage, when he came to know about said difference in pay that his junior officer was getting higher pay than him, he submitted the representation on 08.05.2020 and again on 23.06.2020 to the Finance Department for stepping up of his pay which was ultimately turned down and thereafter, he filed WP(C) No.426 of 2021 and the learned Writ Court allowed the said petition in the following terms:

“5.2 In the light of the above analysis on facts and legal issues involved in the instant writ petition and for the foregoing reasons, the State-respondents are directed to re-fix the scale of pay of the petitioner by way of stepping-up/up-grading his pay scale to Rs.10,000-15,100/- w.e.f. 28.03.2000, i.e. the date when the said pay scale was given to the proforma-respondent, Sri Nalini Ranjan Das. Needless to say, all financial benefits, the petitioner is entitled to under the ROP Rules, 1999 and subsequent revision of Pay Rules, should be fixed notionally till the date prior to 1 (one) year of the date of filing of the writ petition. To re-iterate, the relief relating to payment of arrears is restricted to only 1(two) year before the date of filing of the writ petition and such payment would not carry interest.”

[7] Being aggrieved by the said decision only with regard to limiting the payment of arrear only for 1 (one) year before filing the writ petition, the writ petitioner preferred W.A. No.30 of 2023 claiming arrear at least for 3 (three) years prior to filing of the writ petition. Simultaneously, the State respondents have preferred the writ appeal bearing WA No.53 of 2023 challenging the said decision mainly on the ground that when the ROP Rules, 1999 created difference between the pay scale of a promotee officer and a direct recruitee, the petitioner could not claim the pay fixation at par with the said promotee officer. According to them, as per ROP Rules, 1999, a direct recruitee was entitled to move to CAS-1 after completion of 4 (four) years of service which was duly granted to the writ petitioner.

[8] During hearing, Mr. Debbarma, learned Addl. GA submits that both rules 9A and 9B of ROP Rules, 1999 were not applicable in case of the present writ petitioner and moreover, FR 22(I)(a)(1) was also not applicable in his case inasmuch as he was a direct recruit and said ROP Rules of 1999 prescribe different pay scales for direct recruit and a promotee.

[9] According to Mr. Debbarma, learned Addl. GA both the sources of holding the said post of TPS (Grade-II) by the petitioner as well as said Late Nalini Ranjan Das were different and therefore, they cannot be treated equally at par so far as their pay fixation is concerned and above all, the matter of pay fixation is an expertise subject dealt with by a pay commission and therefore, the court normally should not interfere in the matter.

[10] He also relies on a decision of Apex Court in **Union of India & Ors. vs. Shri C.R. Madhava Murthy & Anr. [Civil Appeal Nos. 2087-2088 of 2022]** decided on 06.04.2022 wherein the persons who were placed lower in the upgradation list than the writ petitioner were drawing higher pay due to upgradation granted to them under ACP scheme. The writ petitioners submitted representation to the Department for stepping up of their pay at par with the juniors. Finally Apex Court held that High Court was justified directing the appellants to step up the pay of the writ petitioners keeping in view of pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors.

[11] Mr. Debbarma also relies on another decision of Apex Court in the case of **Union of India v. R. Swaminathan, (1997) 7 SCC 690**. In this case, the benefit of stepping up was not allowed for the following reasons :

“9. We are, however, in the present case, concerned basically with Fundamental Rule 22(I)(a)(1) and the proviso to Fundamental Rule 22 because, in all these appeals, the junior employees who have got higher pay on promotion than their seniors, had officiated in the promotional

post for different periods on account of local ad hoc promotions granted to them. This is because the Department of Telecommunications is divided into a number of circles within the country. The regular promotions from the junior posts in question to the higher posts are on the basis of all-India seniority. The Heads of Circles have, however, been delegated powers for making local officiating arrangements based on Circle seniority to the higher posts in question against short-term vacancies up to 120 days in the event of the regular panelled officers not being available in that Circle. This period of 120 days was subsequently revised to 180 days. Under this provision for local officiation, the seniormost official in the Circle is allowed to hold the charge of the higher post for a limited duration. This is purely out of administrative considerations and is resorted to in order to tide over the exigencies of work. This practice, we are informed, has been followed in all Circles in the Department of Telecommunications since 1970. This is because, at times it is not possible to fill up all the vacancies in a particular Circle for various reasons such as non-joining by a particular person, chain promotions or short-term vacancies arising on account of leave etc. It is submitted before us by the Department that it is not always possible to convene meetings of the departmental promotion committee for filling up all the posts which are only available for short periods on all-India basis because of administrative problems. To fill up this gap, the Government has issued instructions from time to time to allow local officiating arrangements in the interest of work. The Department has also pointed out that all the aggrieved employees in these appeals have availed of such officiating promotions as and when such occasion arose in their Circle and they were eligible. The juniors, therefore, in each of these cases who have received a higher pay on their regular promotion than the seniors, have received this higher pay on account of the application of the proviso to Fundamental Rule 22.

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11. The Office Memorandum dated 4.11.1993, Government of India, Department of Personnel & Training, has set out the various instances where stepping of pay cannot be done. It gives, inter alia, the following instances which have come to the notice of the Department with a request for stepping up of pay. There are:

‘(a) Where a senior proceeds on Extraordinary Leave which results in postponement of date of next increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade:

(b) If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, the junior draws higher pay than the senior. The senior may be on deputation while the junior avails of the ad hoc promotion in the cadre. *The increased pay drawn by a junior either due to ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term.*

(c) If a senior joins the higher post later than the junior for whatsoever reasons, whereby he draws less pay than the junior, in such cases the senior cannot claim stepping up of pay on a par with the junior."

(d) ***'

There are also other instances cited in the Memorandum. The Memorandum makes it clear that in such instances a junior drawing more pay than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of ad hoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay."

The decision in this case was rendered in a different perspective distinguishable with facts of the present appeals.

[12] Mr. Deb, learned senior counsel for the writ petitioner, on the other hand, argues that the learned Writ Court was completely justified directing the respondents to fix the pay scale of the writ petitioner by way of stepping up but, according to him, normally the arrear is allowed for at least 3 (three) years retrospectively prior to the date of filing of writ petition, but here, the learned Writ Court without justifiable cause has confined the monetary relief only for 1 (one) year.

[13] Mr. Deb, learned senior counsel relies on the decision of **Kamlakar & Ors. vs. Union of India & Ors., (1999) 4 SSC 756** wherein it was observed that once all the related persons came to one cadre, the distinction between direct recruits and promotees disappears at any rate so far as equal treatment in the same cadre for payment of pay scale given is concerned. It was also observed by the Apex Court that the birthmarks have no relevance in this connection. Learned Writ Court also relied on this judgment while coming to its conclusion.

[14] In **Union of India & Ors. vs. Atul Shukla & Ors., (2014) 10 SSC 432**, as relied on by Mr. Deb, learned senior counsel, the followings were held by the Apex Court:

“24. Classification of employees based on the method of their recruitment has long since been declared impermissible by this Court. There can be no differential treatment between an employee directly recruited vis-à-vis another who is promoted. So long as the two employees are a part of the same cadre, they cannot be treated differently either for purposes of pay and allowances or other conditions of service, including the age of superannuation.....”

[15] Regarding continuous cause of action, Mr. Deb, learned senior counsel also relied on another decision in the case of **State of Madhya Pradesh & Ors vs. Yogendra Shrivastava, (2010) 12 SCC 538** wherein at Para 18, the followings were observed :

“18.....Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. **Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application.** [See: M.R. Gupta v. Union of India – (1995) 5 SCC 628, and Union of India v. Tarsem Singh (2008) 8 SCC 648]”

[16] ROP Rule, 1999 was published on 6.2.1999 giving its effect retrospectively from 1.1.1996. Rule 9A of said ROP Rules mainly deals with the issue where the pay of an employee was meanwhile stepped up on or after said date 1.1.1996 and in such cases it was envisaged that, validity of such stepping up would depend on the actual necessity while fixing up the pay in revised scale of both the senior and junior employees in the same cadre. It further stipulated that if the revised pay of senior

employee (without stepping up) in such cases was same or more as that of junior employee in the revised scale, the benefit of stepping up would not be admissible. However, if the revised pay of senior (without stepping up) was lower than that of junior employee, the pay of senior employee would be stepped up to an amount equal to the pay fixed for junior employee in the revised scale of pay from the date the stepping up was permitted in the existing scale with the approval of the Finance Department or by the Department as per existing orders of the Government.

[17] Anyway, in **Kamlakar's case** it has been categorically observed by the Apex Court that the birthmarks have no relevance in connection with fixation of pay. In **Atul Shukla's case** also similar view was taken by the Apex Court that there can be no differential treatment between an employee directly recruited vis-a-vis another who is promoted, so long as the two employees are a part of the same cadre.

[18] In view of the above, we are of the view that the present writ petitioner is entitled to certain pay protection without refixing the pay of the writ petitioner by way of stepping up of his pay to which the pay of said Nalini Ranjan Das was fixed. Further keeping in view of the decision of the Hon'ble Apex Court in **Yogendra Shrivastava's case** we are also of the view that the actual benefits of such pay protection should be limited up to 3(three) years.

For the foregoing reasons, both the appeals are partly allowed and are disposed of in the following terms:

The State-respondents are directed to give similar financial benefits to the writ petitioner equal to the gross salary of said Nalini Ranjan Das with effect from the date when said Nalini Ranjan Das was promoted to the post of TPS(Grade-II) i.e. from 28.03.2000 for 03 (three) years next and the difference of the gross salary of Nalini Ranjan Das and the writ

petitioner, Sri Pinaki Samanta as was during that period should be paid by way of arrear to the writ petitioner without changing or upgrading his pay scale by way of stepping up. Such arrear should be paid by the State-respondents within 3(three) months from the date of receipt of the copy of the order.

The impugned judgment is accordingly interfered with and both appeals are disposed of with the above said directions.

Interim application(s), if any, also stands disposed of.

(S.D. PURKAYASTHA, J)

(APARESH KUMAR SINGH, CJ)

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