

**HIGH COURT OF TRIPURA
AGARTALA**

**IA No.1/2024 in WA No.50 of 2024
WA No.50 of 2024**

Ranjit Debnath & others

.....Applicant/Appellant(s);

Versus

The State of Tripura & others

.....Respondent(s).

**IA No.1/2024 in WA No.51 of 2024
WA No.51 of 2024**

Imran Hossain Maishan & others

.....Applicant/Appellant(s);

Versus

The State of Tripura & others

.....Respondent(s).

**IA No.1/2024 in WA No.52 of 2024
WA No.52 of 2024**

Md. Abdul Munim & others

.....Applicant/Appellant(s);

Versus

The State of Tripura & others

.....Respondent(s).

For Applicant/Appellant(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Deputy SGI,
Mrs. Riya Chakraborty, Advocate.

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

Order

24/06/2024

***IA No.1/2024 in WA No.50 of 2024
IA No.1/2024 in WA No.51 of 2024
IA No.1/2024 in WA No.52 of 2024***

Heard Mr. P. Roy Barman, learned senior counsel for the applicants/appellants, Mr. Bidyut Majumder, learned Deputy SGI for the respondent-Union of India and Mrs. Riya Chakraborty, learned junior counsel to the learned Government Advocate for the respondents-State on the prayer for

condonation of delay of 55 days in preferring the instant memo of appeals. All these appeals are being taken up together as they arise from the common impugned judgment dated 19.02.2024 rendered by the learned Writ Court in a batch of writ petitions whereby the writ petitions were dismissed.

2. On consideration of rival submission of the parties and after going through the explanations urged in all these three interlocutory applications seeking condonation of delay, delay is condoned.

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Heard learned counsel for the parties on the merits of the challenge as well.

2. The writ petitioners/appellants herein in the respective writ petitions/writ appeals indisputably are appointed at different lengths of time initially under “Scheme of Financial Assistance for Modernization of Madrasa Education, 1994” issued by the Ministry of Human Resource Development (Department of Education), Government of India. The scheme was restructured later under two sub-schemes during the period 2014-15 namely “Scheme for Providing Quality Education in Madrasa (SPQEM)” and “Infrastructure Development of Minority Institutions (IDMI)”. This modified scheme was sponsored by the Central Government in the ratio of 90:10 for northeastern states which includes Tripura. These writ petitioners/appellants herein claim to have been appointed as per the terms of the scheme through a selection process. Relevant details of the individual petitioners/appellants herein are indicated in

the body of the writ petition, which are not in dispute by the official respondents. Some of the writ petitioners approached this Court earlier in WP(C) No.519/2015 and other analogous writ petitions which were disposed of by order dated 05.01.2016 [Annexure-5 in WA No.50/2024] directing the Secretary, School Education Department, Government of Tripura to place the matter for consideration of the Council of Ministers for appropriate consideration, if required the Government of India may be roped in, in the exercise. The operative portion of the order dated 05.01.2016 is extracted hereunder:

“For that purpose, the state shall reconsider the recommendation made by the State Level Madrassa Advisory Committee afresh to weigh whether the petitioners and alike can be regularized or extended with a fair protection of their services. The secretary to the Government of Tripura in the School Education Department shall place the matter for consideration of the council of Ministers for their appropriate consideration, if required the Government of India may be roped in, in this exercise. The matter shall be placed by the Secretary to the Government of Tripura, Education Department for consideration of the Council of Ministers along with a copy of this order within a period of 3(three) months from the date when the petitioner shall submit a copy of the judgment to the said Secretary.

With this observation and direction all these writ petitions are disposed of.

There shall be no order as to costs.”

3. The Council of Ministers however declined the proposal to regularize the services of the petitioners working as Madrasa Teachers. However a memorandum was issued on 07.10.2016 by the Directorate of Elementary Education (Madrasa Education Cell) for revision of monthly salary of SPQEM teachers at par with the salary of the State Government teachers with effect from 01.10.2016 in pursuance of the decision of the Council of Ministers dated 27.09.2016 with prior concurrence of the Finance Department. A memorandum dated 13.10.2017 was issued which made allocation of fund of Rs.1,48,19,180/- for payment of enhanced salaries to the Graduate Teachers,

Graduate (B.Ed) and Post Graduate Teachers working under centrally sponsored scheme i.e. SPQEM at par with the teachers working under the Government of Tripura after excluding the salary provided by the Government of India per month to the PGTs and GTs/GTs (B.Ed) for the period of October, 2017 to November, 2017 during the year 2017-18. However, this memorandum was cancelled by memorandum dated 26.10.2017 issued by the Education (School-Elementary) Department (Madrasa Education Cell) and instead, reallocation of fund not exceeding Rs.1,00,08,350/- was accorded during 2017-18 for payment of two months enhanced salaries to teachers of SPQEM, Madrasa for the period October, 2017 to November, 2017 as per break-up contained in the enclosed Annexure-A. This memorandum was issued in exercise of the power delegated vide Government of Tripura, Finance Department Memo dated 09.12.2011.

4. The State Government in its Counter Affidavit has defended this decision to reduce the allocation on the ground that the enhanced allocation made vide memorandum dated 07.10.2016 [Annexure-7] was made due to clerical error by including increment and dearness allowance thereunto. Thereafter, the writ petitioners are being paid the enhanced monthly salary as per SPQEM. It is pertinent to point out here that earlier the State Level Madrasa Advisory Committee in its meeting held on 31.12.2009 had taken certain decisions which include a resolution for regularization of 127 number of existing Modernized Madrasa Teachers at para 8 of Minutes of the Meeting. This recommendation was not acted upon by the Council of Ministers. The learned Writ Court in the first round of litigation had also taken note of the

recommendation while issuing directions upon the department to place the matter for consideration of the Council of Ministers for appropriate consideration and also to involve Government of India, if required. Evidently, the Council of Ministers did not agree to the proposal for regularization of these Madrasa teachers which has led to the second round of litigation [WP(C) No.898/2022]. The writ petitioners, on this occasion, have made two-fold prayer – (i) For regularization of their services in the post of Madrasa Teachers (General/Science/Arabic) under the SPQEM centrally sponsored scheme; (ii) For direction upon the respondents to pay monthly salary at par with their equivalent in the State Government with effect from 01.01.2017 with arrears. The learned Writ Court, upon consideration of the materials on record placed by the rival parties which include the stand of the State Government and the Central Government, has negated the prayer of the petitioners *inter alia* in the following manner:

“10. I have considered the rival submissions advanced by the learned counsel appearing for the parties and have perused the scheme as well as other documents annexed to the writ petition and the counter affidavits.

11. On perusal of the scheme, I find that the scheme is purely voluntary to be fully funded by the Central Government. The scheme is basically formulated to develop the educationally backward minorities pursuing their education in traditional institutions like Madrasas and Maktabas with the inclusion of subjects like Science, Mathematics, Social studies etc. in their curriculum. Clause 3(I) of the Scheme clearly speaks of financial assistance where 100% grants to be provided by the Central Government to ensure the appointment of qualified teachers in Science, Mathematics, Social studies and languages engaged in such traditional/voluntary organizations/Government aided institutions for modernization of Madrasa Education.

12. Further, under Clause 3 of the Scheme, 1994 it is clearly stated that *“In the present scheme, it is proposed to give 100% Central Assistance for salary in addition to other items of the scheme, in order to encourage the voluntary organizations to modernize their curriculum.”* Clause 5 of the Scheme, 1994 prescribes Eligibility Conditions, which is as under:

“5. ELIGIBILITY CONDITIONS:

1. Voluntary organizations/societies/trusts which are registered under central or state Govt. Acts or Wakf Boards shall be eligible to apply for assistance under the scheme.
2. Only those voluntary agencies which have been in existence for three years would be considered for assistance under this scheme.
3. Such voluntary organizations should:
 - have a proper constitution of Articles of Association;

- have a properly constituted managing body with its power and duties clearly defined in the constitution;
- be in a position to secure the involvement, on voluntary basis, of knowledgeable persons for furtherance of their programmes;
- not be run for the profit of any individual or a body of individuals;
- not discriminate against any person or group of persons on the ground of language or sex, etc.
- not function for the furtherance of the interests of any political party;
- not in any manner incite communal disharmony.”

Again, Clause 6 of the Scheme, 1994 prescribes the implementation and monitoring, which is as under:

“6. IMPLEMENTATION AND MONITORING:

The scheme will be implemented by the State Governments as a Central Scheme under which 100% financial assistance will be provided to state Governments for implementation of this scheme. All requests for financial assistance shall, as a rule, be entertained by the State Governments on the prescribed application forms. These will be considered on merits by the State level grant-in-aid committees.

Monitoring report regarding the number of Madrasas receiving assistance, total number of beneficiary students and the amount received and utilized by the madrasas, shall be furnished to the Department of Education, Govt. of India on annual basis. The performance of the scheme may be reviewed after completion of three years of its operation.

Organisations requesting for financial assistance will apply on the prescribed APPLICATION FORM.(ANNEXURE-I).

- *The application will be addressed to the Education Secretary in the State/UT, who will be the Chairperson of Grant-in-Aid committee in the State/UT.*
- *Education Secretary can also nominate any officer to act as Chairperson in his place if he/she so desires.*

Other members of the committee will include:

- *One representative from the Department of Education, Government of India.*
- *One/two representatives from Madrasa Education Management/Board.*
- *One eminent educationist.*
- *TA/DA to attend these meetings will be borne by the concerned Deptt./Institutions/Organisations nominating their representative to attend the Grant-in-Aid Committee meetings.*

The grant will be admissible to only those organizations/institutions who will submit the updated statement of accounts for all the grant-in-aids received by them from central/State governments for the preceding one year duly certified.

The accounts/records of activities of the organization shall be available on demand for inspection to Central/State Government.”

13. I have perused the Scheme, 1994, which has enough relevance to resolve the disputes raised in this writ petition.

14. It is stated in the writ petition that the said Scheme, 1994 had been restructured during the period 2014-15 which covers two special sub-schemes namely, “Scheme for Providing Quality Education in Madrasa(SPQEM)” and “Infrastructure Development of Minority Institutions(IDMI)”. It is further stated that Scheme for Education of Madrasas and Minorities(for short, SPEMM) comprising of SPQEM and IDMI will be a Centrally Sponsored scheme, rather than be continued as 100% grant scheme and the funding pattern under SPEMM(comprising of SPQEM and IDMI) would be similar to other centrally sponsored schemes i.e., 90:10 for NE States, Himachal Pradesh, Jammu & Kashmir and Uttarakhand. So, under the revised scheme the funding pattern has been re-determined as 90:10.

15. Next, on plain reading of the offer of appointments issued in favour of the petitioners it transpires that the petitioners were offered a purely temporary post of General Teacher under the Centrally sponsored Plan Scheme, namely, “Scheme for Providing Quality Education in Madrasa”(SPQEM) implemented by the Education(School) Deptt., Tripura on fixed honorarium basis Rs.6,000/- (Rupees Six thousand) only per month as per schematic pattern of SPQEM Scheme. The terms and conditions of appointment are as under:

- “i) The appointment is purely on temporary basis and till continuation of this scheme by the Government of India.*
- ii) Rates of monthly honorarium may be changed as per norms of Government of India.*
- iii) The appointed teacher shall have to undergo short course training as and when organized by the Director of School Education.*
- iv) Taking of an Oath of Allegiance to the Constitution of India in the prescribed form.*

v) *Their fixed honorarium shall be drawn by the Office of the concerned Inspector of Schools from their respective date of joining.*”

16. It is pertinent to mention herein that the restructured scheme further provides funding pattern where it is stipulated that Rs.6,000/- per month for Graduate Teacher and up to Rs.12,000/- per month for Graduate with B.Ed./Post Graduate/Post Graduate with B.Ed. would be made for maximum of 3(three) teachers per Madrasa and up to Rs.5,00,000/- per year per Madrasa Board.

17. In the light of the aforesaid facts narrated here-in-above, I am of the firm opinion that the petitioners are not entitled to get their services regularized under the State respondents. It is revealed that the Scheme is made for developing the standard of education in the traditional institutions like Madrasas and Maktabas by way of introducing Science, Mathematics, Social studies, etc.

The funding pattern is 90:10 ratio, i.e. to fulfill the object of the Scheme, 90% of the total expenditure would be borne by the Central Government and 10% by State Government. Hence, the State Government has minimum liability to allocate fund for the teachers appointed under the said Scheme, 1994 read with the restructured schemes.

The Central Government has not created any sanctioned post against which such teachers can be permanently appointed or absorbed. In the appointment letter, it is clearly written that the appointment is purely on temporary basis and till continuation of the Scheme, 1994 formulated by the Government of India.

From the Memorandum of offer of appointment as extracted in the preceding paragraph[para 15], it is evident that rates of monthly honorarium also to be fixed by the Government of India and it may be changed as per norms of the Government of India.

18. That apart, this Court in exercise of its extraordinary and discretionary power under Article 226 of the Constitution of India cannot direct the State to regularize or permanently absorb an employee in absence of any sanctioned vacant posts considering the financial involvement necessary for creation of such posts. This Court has no expertise to evaluate the economic scenario of the State. The financial position is to be considered by the State Government itself and in this respect, the Court should not step into the shoes of the Government. The Court also has no power to unilaterally direct the Government to pay the minimum pay of the basic pay to the teachers appointed under the State Government since the nature of appointment *vis-à-vis* the status and position of the petitioners cannot in any way be treated as equal to that of the teachers appointed under the State Government.

19. Furthermore, it is settled proposition of law that claim of regularization cannot be made as a matter of right. The equality clause contained in Articles 14 and 16 of the Constitution of India should be scrupulously followed and the Court should not issue a direction for regularization of services of an employee which would be violative of the Constitutional Scheme(*Daya Lal(supra)*). It is also settled that the salary pattern in respect of an employee shall be governed by the terms mentioned in the appointment letter. The concerned employee has preferred to join the service knowingly well that on being appointed, he would be paid the salary which is mentioned in the terms of offer of appointment itself. In the case of *Daya Lal(supra)*, the Hon'ble Supreme Court has clearly held that the right to claim a particular salary against the State must arise under a contract or under a statute. In the instant case, undisputedly the petitioners are paid the salary which is mentioned in their terms of appointment *vis-à-vis* the Schemes.

20. That keeping in mind, the submission of learned senior counsel for the petitioners that the petitioners are entitled to equal pay for equal work, according to me, the petitioners cannot be treated at par the regular teachers appointed under the State Government. Here, without amplifying the matter, it is clear that the status and position of the petitioners is clearly distinguishable as they were not appointed against any regular sanctioned posts alike the teachers appointed under the State Government in accordance with a specified Recruitment Rule framed under Article 309 of the Constitution of India; in contra-distinction the appointments of the petitioners directly and manifestly emanated from a Scheme formulated by the Central Government in a particular situation to achieve a

different object, that is, to standardize education in Madrasas, and similar other organizations working in this field as stated in the preceding paragraphs.

21. The above dissimilarities disentitle the petitioners to be treated at par the teachers appointed under the State Government. The service conditions of the petitioners are exclusively governed by the provisions envisaged in the said Scheme *vis-à-vis* the memorandum of appointment encapsulating the terms and conditions mentioned therein.

22. For the reasons stated and discussed here-in-above, I do not find any merit in the present writ petitions and accordingly, the above bunch of writ petitions stands dismissed.”

Being aggrieved, the writ petitioners have approached this Court in these appeals.

5. The sheet anchor of the argument on behalf of the appellants advanced by learned senior counsel Mr. P. Roy Barman assisted by learned counsel Mr. Kawsik Nath is that by the very nature of their engagement, the petitioners/appellants herein are performing a permanent job though it is being extended from time to time as a centrally sponsored scheme initially with funding of hundred percent and later modified in the ratio of 90:10. The original scheme of 1994 mandated that the salary for teachers appointed under this scheme will be the same as given to similar teachers appointed by the respective State Governments. It is also the case of the petitioners that they have been appointed through a regular selection process but till date they have not been regularized in service; nor are being treated at par with the similar teachers appointed by the respective State Governments in terms of salary and other service benefits after 2017. Learned senior counsel for the petitioners/appellants herein has drawn the attention of this Court to a recent decision dated 30.01.2024 rendered by the Apex Court in the case of ***Vinod Kumar and Ors. v. Union of India (UOI) and Ors.*** passed in ***Civil Appeal Nos. 5153-5154 of 2024 (arising out of SLP (C) Nos.22241-42 of 2016)***. It is submitted that the Apex

Court has, in the said decision after taking note of the initial appointment of the appellants on temporary basis under a scheme based engagement which continued over a length of time, held that failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment Regulations. The Apex Court took into consideration the fact that these appellants were also granted promotion by a regularly constituted Departmental Promotion Committee and had been in continuous service for over a quarter of a century. Accordingly, the submissions on behalf of the appellants were accepted by issuing a direction upon the respondent-Railways to complete the process of regularization within a stipulated period. Relying upon this decision, learned senior counsel for the appellants submits that even in cases of engagement under temporary scheme which has continued for a length of time as is the case of the present appellants, the claim for regularization cannot be negated on the ground that their initial engagement was on temporary basis under a centrally sponsored scheme. They are performing a perennial nature of job and as such, they are entitled to regularization.

6. Both the Central Government and the State Government have countered the submission of the petitioners/appellants herein through Counter Affidavits filed before the learned Writ Court which are annexed to the instant memo of appeals as well. Mr. Bidyut Majumder, learned Deputy SGI has drawn the attention of this Court to the Schedule annexed to the scheme under which funds are to be allocated to the State Government for bearing the burden of salary of the Madrasa teachers like the petitioners. It is submitted that para 8 of

the scheme clearly indicates that the appointments are on contract basis and the scheme does not provide for a cadre of regular appointment. These are purely on short term basis. There is no provision of regular teachers in the scheme. It is further submitted that the centrally sponsored scheme provides for assistance to State Governments on differential funding basis across India. The funding to the northeastern states is in the ratio of 90:10. The appellants are seeking regularization under the State Government. The original scheme and the modified scheme SPQEM are planned expenditure which do not contemplate creation of regular posts under the establishment, the expenses of which can be borne by the Central Government like that of a regularly appointed employee. It is also submitted that the appointments being of purely temporary nature, can last only till the continuation of the scheme by the Government of India as is also indicated in the terms and conditions of the appointment to the individual appellants.

7. On the part of the State Government Mrs. Riya Chakraborty, learned junior counsel to Government Advocate, has reiterated the averments made in the Counter Affidavit. It is submitted that the Council of Ministers did not accept the proposal for regularization of services of the appellants in its meeting held on 28.06.2016. The request made to the Ministry of Human Resource Development, Department of School Education & Literacy, Government of India on 04.03.2016 for regularization of these Madrasa teachers was not responded to. It is their case that the State Government is only required to bear 10% of the financial burden for payment of honorarium to these Madrasa teachers under the centrally sponsored scheme. The respondents-

State however does not dispute that the appellants have been appointed after due advertisement. But it is stated that their engagement are on temporary basis which shall last only till the continuation of the scheme. The rates of monthly honorarium may be changed as per norms of Government of India. Since the engagement is on temporary basis under a centrally sponsored scheme, the State Government is not in a position to regularize the services of these appellants.

8. We have considered the submission of learned counsel for the parties at sufficient length and taken note of the relevant materials placed on record. We have also gone through the impugned judgment and the decision of the Apex Court in the case of *Vinod Kumar and Ors.* (supra) cited on behalf of the appellants.

The engagement of these appellants indisputably is under a centrally sponsored scheme initially with 100% assistance under the original scheme of 1994 and later on modified in the year 2014-15 in the ratio of 90:10 for the northeastern states including Tripura. Though the petitioners/appellants herein have been appointed after a selection exercise under an advertisement under the CSS, but their terms and conditions of appointment stipulate that it is purely on temporary basis and till continuation of the scheme by the Government of India. Government of India bears 90% of the fund whereas the State Government bears only 10%. The scheme is accepted on voluntary basis by the State Government. Burden of bearing the entire expenses of a regular employee thus cannot be placed upon the State Government when the scheme is of the Central Government and the share of the State is only 10%. It is also not in dispute that neither the Central Government has asked nor the State

Government has created any sanctioned post for permanent appointment or absorption of teachers like the appellants engaged in Madrasa. On a pointed query put to the learned senior counsel for the appellants as to whether similarly situated teachers are working on permanent establishment under the Madrasa performing the same nature of duties and discharging the similar nature of responsibilities, learned senior counsel for the appellants have not been able to point out such an instance. On the other hand, the averments made at para 38 of WP(C) No.898/2022 (against the judgment of which WA No.50/2024 was preferred) does refer to representation of the petitioners raising various demands including salary like other teachers working under the State Government and for regularization of their services. Thus, the contention of the petitioners that they have been performing similar nature of duties like other teachers permanently engaged in Madrasa to substantiate the claim of regularization is not acceptable. The learned Writ Court appears to have taken due note of all the relevant pleadings and documents including the terms and conditions of the centrally sponsored scheme and the terms of the appointment of these teachers in Madrasa and rightly come to a conclusion that they are not entitled for regularization or for being permanently absorbed in the government services. The relevant findings of the learned Writ Court have been extracted hereinabove as well. Provision for salary at par with the State Government teachers appears to have been taken by the State Government as per memorandum dated 07.10.2016. The allocation of fund for that purpose through memorandum dated 13.10.2017 was cancelled as due to inadvertence, the computation of the amount was made including increment and dearness

allowance which are not admissible to the present Madrasa teachers at par with the State Government teachers. In any case, the State Government is under an obligation to provide for 10% of the burden of salary to be paid to these teachers as the scheme is a centrally sponsored scheme. The respondents-State in its Counter Affidavit has also taken the plea of fund constraints to provide salary on continuous basis at par with the State Government teachers. The learned Writ Court has also duly taken note of this position at para 18 of the impugned judgment and rightly observed that it cannot direct the government to pay the minimum pay or the basic pay to the teachers appointed under the State Government since the nature of appointment vis-à-vis the status and position of the appellants cannot in any way be treated as equal to that of the teachers appointed under the State Government. Though the appointments have been made on temporary basis by the State Government, but the scheme is a centrally sponsored scheme. As such, the State Government cannot be compelled to make payment of salary if it faces financial constraints. However, the request of the petitioner to accord salary equivalent to teachers in the State Government depending upon the financial position of the State Government is always left open for the State respondents to take into account for giving similar benefits to the present appellants. The observations made hereinabove does not amount to foreclosing that option for the State Government forever if the finances permit.

9. In the light of the discussion made hereinabove, we are also of the considered view that the appellants do not have a right to be regularized under the centrally sponsored scheme by the State Government. In the case of ***Vinod Kumar and Ors.*** (supra) which has been relied upon on behalf of the appellants,

it can be seen that the engagement of those appellants, was under a scheme on temporary basis under the Railways, though not in the nature of a centrally sponsored scheme like the present one where the Central Government has borne 90% of the fund and the State Government has to bear 10% of the expenses. Moreover, in the case of *Vinod Kumar & Others*, those appellants continued under the engagement of the Railways for over a quarter of a century and got promotions through a regularly constituted Departmental Promotion Committee and were performing substantive nature of their duties which aligned with regular employees. In the case of the present appellants, there is no such permanent cadre of teachers in the Madrasa performing substantive nature of duties on regular basis for the appellants to claim themselves at par. In such circumstances, the decision rendered by the Apex Court in the case of *Vinod Kumar and Ors.* would not come to the aid of the present appellants. As such, we do not find any substance in these appeals. They are accordingly dismissed.

10. Pending application(s), if any, shall stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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