

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.394 of 2024

Sri Ramapati Chakraborty, son of Ram Kumar Chakraborty, resident of Rama Tilla, Kamalasagar, PO-Kamalasagar, PS-Madhupur, District- Sepahijala Tripura, PIN-799102.

..... Petitioner (s).

Versus

- 1) The State of Tripura, represented by the Commissioner & Secretary, Elementary Education Department, Government of Tripura, having his office at Secretariat Building, PO- Kunjaban, PS- New Capital Complex, District West Tripura, PIN- 799006.
- 2) The Commissioner & Secretary, Elementary Education Department, Government of Tripura, having his office at Secretariat Building, PO- Kunjaban, PS- New Capital Complex, District- West Tripura, PIN- 799006.
- 3) The Director, Elementary Education, Government of Tripura, having his office at Shiksha Bhawan, Agartala, District- West Tripura, PIN- 799001.
- 4) The Director, State Council of Educational research and Training, having his office at Abhoynagar, Agartala, District- West Tripura.
- 5) The State Project Director, Samagra Shhiksha, Tripura.

..... Respondent(s).

For Petitioner (s) : Mr. Somik Deb, Sr. Advocate,
 Mr. Pranabindu Chakraborty, Advocate,
 Ms. R. Debnath, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

ORDER

04/10//2024

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. Pranabindu Chakraborty, learned counsel for the petitioner and Mr. Kohinoor N. Bhattacharyya, learned Government Advocate for the respondents.

[2] Petitioner have approached this Court in the present writ petition on account of rejection of his claim relating to extending the benefits

at par with Sri Kalyan Kishore Saha, Technical Assistant vide impugned order dated 22.04.2024 (Annexure-17). The petitioner had earlier approached this Court in WP(C) No.69/2023 on the plea that the SCERT had enhanced the remuneration of one Sri Kalyan Kishore Saha, pro-forma respondent as he was considered “Outstanding” due to his efficiency & positive attitude which was at par with remuneration of other Coordinators of Samagra Shiksha. Being prejudiced thereby the petitioner along with others had submitted a representation to the Director, SCERT dated 19.10.2020 praying for enhancement of monthly remuneration of contractual staffs of EDUSAT Network of Tripura, as 6 Nos. of EDUSAT Staff were at par with monthly remuneration of Sri Kalyan Kishore Saha. Thereafter, respondents initiated a proposal to enhance the monthly remuneration of the petitioner from Rs.23,967/- to Rs.27,711/- as per decision dated 15.09.2022 *with effect from* 01.09.2022. Petitioner was, however, neither accorded the said enhanced monthly remuneration *with effect from* 01.04.2020, nor any arrear on account thereof was paid to him. The writ petition was disposed of on the first date itself while setting aside the memorandum dated 21.09.2022 by which the claim of grant of higher pay of Rs. 53,800/- to the petitioner was negated. The matter was remanded back to respondent Nos. 4 and 5 to pass a speaking order with regard to extending the benefits to the petitioner at par with the said employee i.e. pro-forma respondent since petitioner had alleged discrimination.

[3] Thereafter, the State had filed a Review Petition No.31/2023 which was disposed of vide order dated 16.01.2024. The learned review

Court though restored the memorandum dated 21.09.2022 which was earlier set aside vide order dated 17.03.2023 in WP(C) No.69/2023 but rest of the order passed in the writ petition was kept intact. The respondents were granted three months time to communicate the decision on petitioner's representation. Thereafter, the impugned order dated 22.04.2024 (Annexure-17) has been passed which reads as under:

“GOVERNMENT OF TRIPURA
STATE COUNCIL OF EDUCATIONAL RESEARCH AND
TRAINING
Abhoynagar, Agartala, West Tripura

.....
File No.F.25(208)-DEE/LA/L-2/2023/53

Date 22/04/2024

Order

Whereas, Sri Ramapati Chakraborty, Cameraman had filed a writ petition before The Hon'ble High Court of Tripura vide no. WP (C) NO. 69 OF 2023 whereby the Hon'ble High Court of Tripura directed the respondent".....to pass a speaking order with regard to extending the benefits to the petitioner herein at par with the said employee i.e. pro-forma respondent herein..."

And Whereas, it is observed that the remuneration of Sri Ramapati Chakraborty, Cameraman and Sri Kalyan Kishore Saha, Technical Assistant were Rs.4000/- and Rs.6500/- respectively at the time of their Joining in the Year 2007 in the EDUSAT Network of SCERT, Tripura engaged on purely Contractual basis for a period of one year.

And Whereas, The MHRD, Govt. of India placed one time fund in the year 2006 for mitigating the expenditure of EDUSAT activities and there after no fund was placed for this purpose. Despite non continuation of the said EDUSAT Project and non-continuation of fund from the MHRD, Govt. of India, the Department chose to retain the petitioner on yearly basis with the approval of the competent authority.

And whereas, since the said Post held by Sri Ramapati Chakraborty and Sri Kalyan Kishore Saha are dissimilar by their very nature, remuneration attached with the said posts are also different.

And whereas, the said remuneration were revised from time to time and presently fixed at Rs.27, 711/ for Cameraman (Sri Ramapati Chakraborty) and Rs. 53,800/ for Technical Assistant (Sri Kalyan Kishore Saha). At present their remuneration is being arranged from the annual grant of SCERT under Samagra Shiksha.

And whereas, since the said Posts are entirely dissimilar and had different remunerations attached to them since the very

beginning, claim of Sri Ramapati Chakraborty for remuneration at par with Sri Kalyan Kishore Saha appears inappropriate.

In view of the above facts, it has been decided not to enhance the remuneration of Sri Ramapati Chakraborty, Cameraman at par with Sri Kalyan Kishore Saha, Technical Assistant.

This is issued in compliance with order of the Hon'ble High Court of Tripura vide No. Rev. Petn. No. 31 of 2023 dated 16-01-2024.

Sd/-
(N.C. Sharma)
Director
SCERT, Tripura

[4] Petitioner being aggrieved has assailed the said order dated 22.04.2024 and also sought direction for enhancement of monthly remuneration of Rs.27,711/- *with effect from* 01.07.2020 where the monthly remuneration of Sri Kalyan Kishore Saha, Technical Assistant, was enhanced along with arrears thereof.

[5] Mr. Somik Deb, learned senior counsel for the petitioner has submitted that the enhancement of remuneration of Sri Kalyan Kishore Saha was a pay upgradation treating his performance as outstanding on the basis of his efficiency and positive attitude. The periodical review and grant of annual increments to a government servant are permissible under established legal principle. Any assessment of extraordinary performance by a government servant cannot result in discrimination in such periodical review, allowances and yearly increments, admissible to other similarly situated government servants. If a higher pay scale is accorded in favour of one of the selectees, it is obligatory on the part of the government/employer to grant the same & similar higher pay benefits to other similarly situated selectees, applying the same parameters like pay matrix, pay band, multiplier

etc. Non-grant thereof would result in violation of the equality doctrine. Therefore, non-grant of enhanced monthly remuneration of Rs.27,711/- in favour of the petitioner, *with effect from* the date from when monthly remuneration of Sri Kalyan Kishore Saha, Technical Assistant was enhanced i.e. from 01.07.2020 along with arrears thereof, has resulted in violation of the rights of the petitioner, guaranteed under Articles 14, 16, 19, 21 & 300A of the Constitution of India and also the Statutory rights, guaranteed under the Tripura State Civil Services (Revised Pay) Rules, 2017.

[6] Learned senior counsel for the petitioner has placed reliance upon a decision of the Apex Court in the case of ***K.T. Veerappa and others versus State of Karnataka and others*** reported in ***(2006) 9 SCC 406*** and submitted that if the decision of the employer is unreasonable and discriminatory *vis-a-vis* a section of employees, the writ Court can, in exercise of judicial review, interfere in such administrative decisions pertaining to pay fixation. Therefore, the impugned order may be set aside. The respondents may be directed to enhance the monthly remuneration of the petitioner commensurate with the increase granted to Sri Kalyan Kishore Saha. However, learned senior counsel for the petitioner submits that since both the posts are different, petitioner does not seek parity in enhancement of remuneration on the same scale as that granted to Sri Kalyan Kishore Saha. The enhancement of remuneration granted to the petitioner from time to time are periodical revisions in contractual wages and not a financial upgradation like that which has been granted to Kalyan Kishore Saha on

finding his performance as outstanding. Therefore, interference may be made.

[7] Mr. Kohinoor N. Bhattacharyya, learned Government Advocate has supported the impugned order. He has also referred to the averments made in the counter affidavit. It is the case of the respondents that initially engagement of the petitioner and other technical persons in the year 2007 was made under EDUSAT scheme on purely contractual basis for a period of one year on a consolidated remuneration of Rs.4,000/- only. Clause (viii) of the appointment reflects that the engagement would be treated as terminated after one year from the date of joining automatically and this engagement shall not accrue any claim for future absorption. It is further stated that MHRD, Government of India had placed one time fund in the year 2007 for meeting the EDUSAT activities but thereafter, no fund was placed for this purpose nor was any formal communication made for closure of the EDUSAT activities. The contractual persons engaged under EDUSAT scheme have been continuing since their appointment and presently their remuneration are being managed from the fund of MMER of Teacher Education / Annual Grant of SCERT under Samagra Shiksha. It is further stated that Sri Kalyan Kishore Saha was working in a different post of Technical Assistant. He was initially granted the fixed remuneration of Rs.6,500/- per month. The post and remuneration of the petitioner and Sri Kalyan Kishore Saha are, therefore, dissimilar and different. At paragraph- 9 of the counter affidavit, the periodical financial enhancement of remuneration granted to the petitioner at different stages, is furnished. It

shows that the petitioner got enhancement of his remuneration from Rs.4,000/- in the year 2007 to Rs. 9,330/- *with effect from* 01.07.2010; Rs.12,147 *with effect from* 01.10.2012; Rs.17,726/- and thereafter Rs.23,967- *with effect from* 01.02.2018. The last enhancement was made on 01.09.2022 @Rs.27,967/-. According to the respondents no fund has been placed by the government of India for continuing with the engagement of the technical persons engaged under EDUSAT activities. Petitioners and others are being made to work on purely temporary basis. As such, the case of the present petitioner is completely dissimilar to that of Sri Kalyan Kishore Saha who was initially engaged on the post of technical assistant @Rs.6500/- per month which has been periodically revised from time to time. Therefore, petitioner's claim that he should be treated at par with Sri Kalyan Kishore Saha is not correct since petitioner and Sri Kalyan Kishore Saha are not similarly situated. There is no basis to allege discrimination in the enhancement of remuneration of both of them. Therefore, no case of arbitrariness of discrimination could be made out by the petitioner *vis-a-vis* the enhancement granted to Sri Kalyan Kishore Saha. Therefore, the impugned order deserves no interference and the instant petition may be dismissed.

[8] I have considered the submissions of the learned counsel for the parties and taken note of the attended materials facts placed from record. As noted above, petitioner approached this Court on account of enhancement of remuneration of Sri Kalyan Kishore Saha to Rs.53,800/- claiming that other employees of the EDUSAT scheme should also be treated at par with the

monthly remuneration of Sri Kalyan Kishore Saha. After the matter was finally remitted to the respondents to consider the case of the petitioner on such claim by the order dated 16.01.2024 passed in Review Petition No.31/2023, the respondents have vide impugned order dated 22.04.2024 rejected his claim on the ground that the post of Cameraman held by the petitioner is dissimilar to the post of technical assistant held by Sri Kalyan Kishore Saha from the very beginning. They have been receiving different remunerations right from their initial engagement. While petitioner was engaged as a cameraman @Rs.4,000/- per month initially for a period of one year, Sri Kalyan Kishore Saha was engaged under the same EDUSAT scheme @Rs.6,500/- per month initially also for a period of one year. It is not that petitioner has not been granted enhancement in remuneration since his engagement from time to time and lastly *with effect from* 01.09.2022 @ Rs.27,967/-. Learned senior counsel for the petitioner has sought to emphasize that the enhancement granted to the pro-forma respondent-Sri Kalyan Kishore Saha, is in the nature of a financial upgradation like revision in pay scale and that too on the basis of his outstanding performance as assessed by the respondents but the remuneration of the petitioner has been increased on an incremental basis and there is no such financial upgradation in the scale of pay *vis-a-vis* that of Sri Kalyan Kishore Saha and other coordinators of the Samagra Shhiksha. On that basis the decision of the respondents not to grant enhancement of remuneration to the petitioner has been questioned relying upon the decision of the Apex Court in the case of ***K.T. Veerappa and others (supra)***. However, this Court upon consideration of the case of the parties and the conspicuous differences in the post held by

the petitioner i.e. cameraman and Sri Kalyan Kishore Saha i.e. technical assistant right since their engagement in 2007 on contract basis, is of the opinion that the claim of the petitioner based on parity set up before this Court in the writ petition is not tenable. On the one hand, the petitioner has got periodical enhancements of remuneration as furnished in paragraph- 9 of the counter affidavit referred to hereinabove as well, Sri Kalyan Kishore Saha, holding a totally different post of technical assistant, has got enhancement of remuneration from time to time. The details of periodical enhancement of Sri Kalyan Kishore Saha have not been furnished in such tabular form by either of the parties. In such circumstances, this Court is of the view that the claim of the petitioner based on grounds of parity with Sri Kalyan Kishore Saha is not made out.

[9] The Apex Court in the case of *K.T. Veerappa and others* (supra) had observed that while it is true that fixation of pay and determination of parity in duties is the function of the Executive and the scope of judicial review of administrative decision in this regard is very limited but it is also equally well-settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find that such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. In the present case since the post held by the petitioner and that of Sri Kalyan Kishore Saha are dissimilar having different remunerations and have got enhancement from time to time, comparison between the two on principles of parity would be misplaced. Therefore, a proportionate

enhancement of remuneration of the said person could not be a basis to claim parity by the petitioner who holds a totally different post and has also getting enhancement of remuneration from time to time. Therefore, the decision of the respondents cannot be said to be unreasonable, discriminatory and unjust so as to warrant interference by this Court in matters relating to fixation of pay which are primarily in the domain of the executive. Therefore, this Court does not find any reason to interfere in the impugned order.

Accordingly, the instant petition is dismissed.

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

(APARESH KUMAR SINGH), CJ

