

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.65 of 2023

The State of Tripura and others

.....Appellant(s)

V E R S U S

Sri Nayan Das, Subedar (Accountant)

.....Respondent(s)

along with

WA No.70 of 2023

The State of Tripura and others

.....Appellant(s)

V E R S U S

Sri Jyotirmoy Bhattacharya

.....Respondent(s)

WA No.71 of 2023

The State of Tripura and others

.....Appellant(s)

V E R S U S

Sri Pradip Malakar

.....Respondent(s)

WA No.74 of 2023

The State of Tripura and others

.....Appellant(s)

V E R S U S

Sri Jayanta Chakraborty

.....Respondent(s)

WA No.76 of 2023

The State of Tripura and others

.....Appellant(s)

V E R S U S

Sri Bijoy Kumar Jamatia

.....Respondent(s)

WA No.77 of 2023

The State of Tripura and others

.....Appellant(s)

V E R S U S

Sri Ratan Das

.....Respondent(s)

WA No.78 of 2023

The State of Tripura and others

.....Appellant(s)

V E R S U S

Sri Kanwaljit Yadav

.....Respondent(s)

WA No.80 of 2023

The State of Tripura and others

.....Appellant(s)

V E R S U S

Sri Bijoy Sukla Das

.....Respondent(s)

For Appellant(s) : Mr. M. Debbarma, Addl. G.A.

For Respondent(s) : Mr. Somik Deb, Sr. Advocate,
Mr. P. Chakraborty, Advocate.

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

Date of hearing and judgment : **8th July, 2024.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

Heard Mr. M. Debbarma, learned Additional Government Advocate for the appellants-State in all these appeals and Mr. Somik Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel for the writ petitioners/respondents herein.

2. State is in appeal against the impugned judgment dated 12.07.2022 passed in a batch of writ petitions led by WP(C) No.483/2020 raising common issues relating to fixation of pay on promotion to a higher post or grade. Petitioners/respondents herein are working under the Director General of Police and the individual details of their climbing up in cadre are also furnished in their respective writ petitions and briefly captured in the impugned judgment as well. They raised grievances that they have been deprived from getting their legitimate pay fixation benefits on their promotion to the posts. The ROP Rules of 2009 and its subsequent amendments, including memorandums issued from time to time, governing the fixation of pay of the employees, including the writ petitioners, under the State Government were placed and noticed by the learned

Writ Court. Writ petitioners laid a challenge to the memorandum dated 26.08.2019 the construction whereof is the bone of contention between the parties. The learned Writ Court, after noticing the case of the parties, came to a conclusion that the ROP Rules, 2009 and its subsequent amendments being statutory in nature enacted under proviso to Article 309 of the Constitution of India by the Government of Tripura created a *de jure* right in favour of the petitioners which could not be impaired by a memorandum dated 26.08.2019 – an administrative instruction/circular which could not have the flavour of law. It was pointed out by the State that the ROP Rules, 2009 had been superseded by the ROP Rules, 2017. Learned Writ Court however came to a conclusion that the memorandum dated 26.08.2019 could not have an overriding effect on the statute i.e. ROP Rules, 2009 which vested a right in favour of the petitioners in respect of their pay fixation. Accordingly, the learned Writ Court directed the respondents to consider the case of the petitioners without reference to the impugned memorandum dated 26.08.2019 which negates the actual financial benefits to the petitioners from the date of approval thereof till 31.08.2019 and also treating the promotion of the petitioners after 2010. The petitioners were held entitled for consequential benefits in respect of their incentives.

3. We have considered the submission of learned counsel for the parties. Certain queries were posed on the previous dates as to the construction and application of the memorandum dated 26.08.2019 and also on the question of exercise of option on the part of the employees thereunder to remain in the pre-revised scale. On a bare reading of the memorandum dated 26.08.2019, it appeared to the Court that it is in the nature of a clarification to the references

made by several departments on fixation of pay of those government employees who had opted for re-fixation of their pay in the lower post in terms of TSCS (Revised Pay) Rules, 2009 but subsequently got promoted to higher post during the prevalence of the 2009 Rules and were receiving lower pay than the entry pay in the revised pay structure for direct recruits appointed on or after 01.01.2006 as indicated in Para-E read with Para-D of Schedule-I of TSCS (Revised Pay) Rules, 2009.

4. It has been pointed out by learned senior counsel for the writ petitioners that this memorandum actually makes a clarification in respect of both categories of employees i.e. those who were direct recruits appointed on or after 01.01.2006 and promotees like the petitioners who had opted to remain in the lower post in terms of the Rules of 2009, but had got promoted to higher post during period of operation of the 2009 Rules. For better appreciation, the text of the memorandum dated 26.08.2019 is extracted hereunder:

GOVERNMENT OF TRIPURA
DEPARTMENT OF FINANCE

No.F.6.(1)-FIN(PC)/2008

Dated, Agartala, the 26th August, 2019

MEMORANDUM

Subject: Clarification regarding fixation of pay of Government employees promoted to higher posts with higher pay structure on or after 01-01-2006 in terms of TSCS (Revised Pay) Rules 2009.

The undersigned is directed to refer to the provisions contained in Rule 8 of TSCS (Revised Pay) Rules 2009 which states that the pay of direct recruits to a particular posts carrying a specific Grade Pay shall be fixed on or after the 01-01-2006 at the entry level pay in the Pay Band as indicated in Part-E read with Part-D of Schedule-I of this Rules. In the case of promotion on or after 01-01-2006, if the concerned employee has opted for revised pay in terms of TSCS (Revised Pay) Rules 2009 in his lower post, then his pay in the higher post due to promotion shall be fixed under the provisions of Rule 12 of TSCS (Revised Pay) Rules 2009.

2. Several Departments have made references to Finance Department seeking clarification on fixation of pay of those Government employees, who having opted to refix their pay in the lower post in terms of TSCS (Revised Pay) Rules 2009, subsequently gets promoted to higher post during the period of effect of TSCS (Revised Pay) Rules, 2009 and receives lower pay than the entry pay in the revised pay structure for direct recruits appointed on or after 01-01-2006 as indicated in Part-E read with Part-D of Schedule-I of TSCS (Revised Pay) Rules, 2009.

3. The matter has been examined in Finance Department and after careful examination, it has been clarified that the pay of those Government employees who have

been drawing revised pay in the lower post in terms of TSCS (Revised Pay) Rules 2009 and subsequently gets promoted to higher post during the period under TSCS (Revised Pay) Rules, 2009 shall not receive pay lower than the entry pay as indicated in Part-E read with Part-D of Schedule-I of TSCS (Revised Pay) Rules, 2009. An illustration to that effect is given below:

Illustration:-

Suppose a Government employee is drawing basic pay of Rs.14030/- (Band pay – Rs.11430/-+ Grade Pay – Rs.2600/-) per month in pay structure of PB-3 (Rs.9570-30000/-+Grade Pay – Rs.2600/-) in his lower post. He/She was appointed to a higher post on promotion in the pay structure of PB-3 (Rs.9570-30000/- + Grade Pay – Rs.3500/-) on 26.07.2011. He/She opts to get his pay fixed in the higher pay of the promotion post directly on the date of promotion i.e., 26.07.2011. His pay will be fixed on promotion as follows:

1.	Pay Band & grade pay applicable to the lower post	PB-3 (Rs.9570-30000/- + Grade Pay-Rs.2600/-)
2.	Basic Pay drawn in the lower post	Rs.14030/- (Band pay-Rs.11430/- + Grade Pay-Rs.2600/-)
3.	Pay Band & Grade pay applicable to the promotion post	PB-3 (Rs.9570-30000/- + Grade Pay-Rs.3500/-)
4.	Basic Pay on 26-07-2011 due to promotion as per Rule 12 of TSCS (ROP) Rules 2009	Rs.15350/- (Rs.11430 + 3% of Rs.14030 i.e., 420 + GP-Rs.3500/-)
5.	Entry Pay in PB-3 against Grade Pay-Rs.3500/- as indicated at Part-E read with Part-D of TSCS (Revised Pay) Rules, 2009	Rs.16470/-
6.	Pay as on 26-07-2011 due to promotion	Rs.16470/-

4. In light of the above, the undersigned is directed to inform that if the pay of a Government employee who has been drawing revised pay in the lower post in terms of TSCS (Revised Pay) Rules 2009 and who has subsequently been appointed to a higher post on promotion during the period under TSCS (Revised Pay) Rules 2009, happens to be lower than the Entry pay as mentioned at Part-E read with Part-D of Schedule-I of TSCS (Revised Pay) Rules 2009 then the revised pay due to promotion shall not be less than the said Entry pay of the promotion post. However, this instruction shall not affect those cases where the fixation of pay due to promotion is higher than the entry pay of the promotion post. This shall also not be applicable to cases where a Government employee is already drawing higher pay of the promotion post, if any, due to entitlement of Assured Career Progression Scheme.

5. The undersigned is further directed to inform that the above benefit of revised pay shall be allowed notionally, even for the purpose of revision of pay in respect of TSCS (Revised Pay) Rules, 2017 and its amendment. Actual financial benefit of higher pay scale may be allowed to eligible cases from 1st September, 2019. Cases where the Government employee had proceeded on retirement shall not be reopened. For any posts that are not covered under the provisions of TSCS (Revised Pay) Rules 2009, cases for relief in terms of the instant Memorandum may not be considered.

(A. Dewanjee)
Deputy Secretary to the
Government of Tripura
Finance Department

5. While dealing with the construction of the memorandum dated 26.08.2019, the Court felt it necessary to inquire whether the writ petitioners had consciously exercised an option for re-fixation of their pay in the lower post in terms of the ROP Rules, 2009 or they had remained silent leading to their fixation of pay on promotion to the higher post under the revised ROP

Rules, 2009 as an automatic consequence. Pleadings in the writ petitions are silent as to the exercise of option on the part of the writ petitioners.

6. On the other hand, Mr. M. Debbarma, learned Additional Government Advocate for the appellants-State has, on the basis of instructions furnished, placed before the Court certain documents which according to him are option forms signed by the writ petitioners to switch over to the revised pay structure under the ROP Rules of 2009 and 2017. This position on fact, therefore, remains inconclusive in the present state of pleadings. Para 5 of the memorandum dated 26.08.2019 extracted above creates an impression that the benefit of revised pay would be allowed notionally even for the purpose of revision of pay in respect of TSCS (Revised Pay) Rules, 2017 and its amendments whereas actual financial benefit of higher pay scale may be allowed to eligible cases from 01.09.2019. Cases where the government employee had proceeded on retirement shall not be reopened. For any posts that are not covered under the provisions of TSCS (Revised Pay) Rules, 2009, cases for relief in terms of the memorandum dated 26.08.2019 may not be considered. Writ petitioners apprehended that the re-fixation of pay in their cases upon promotion has been made effective notionally from the due date, but the actual financial benefit of higher scale are being conferred as per para 5 of the memorandum dated 26.08.2019 with effect from 01.09.2019. This in fact is a negation of the statutory rule which conferred upon them the benefit of pay fixation in actual terms with effect from the date on which they were permitted. As observed hereinbefore, on an earlier date learned Additional Government Advocate for the appellants-State was also asked to clarify as to whether the

last paragraph of the memorandum dated 26.08.2019 confines itself to the ROP Rules, 2017 or it also deals with the re-fixation of pay under the Rules of 2009, as it appeared from a reading of the said memorandum that it was in the nature of a clarificatory guideline regarding implementation of Rules of 2009 in respect of the employees who had opted to remain in the pre-revised scale and were getting lesser salary on their promotion to the higher post vis-à-vis others who opted for revised scale and were promoted.

7. Mr. Debbarma, learned Additional Government Advocate for the appellants-State, however relies upon a written note dated 13.05.2024 of the Under Secretary, Finance Department to the effect that for the purpose of revision of pay in respect of TSCS (Revised Pay) Rules, 2017 and its amendments, the actual financial benefit of higher pay scale may be allowed with effect from 01.09.2019 as per memorandum dated 26.08.2019. This again appears to be an incongruent stand on the part of the department when the document i.e. memorandum dated 26.08.2019 is read as a whole.

8. Learned senior counsel for the petitioners/respondents herein has pointed out to the statements made in the Counter Affidavit where the re-fixation of pay of these petitioners have been made notionally with effect from the due date of their promotion prior to the coming into operation of the ROP Rules, 2017 in view of the memorandum dated 26.08.2019 which according to him means that the memorandum dated 26.08.2019 lay down a clarification in respect of the implementation of ROP Rules, 2009 and its subsequent amendments in respect of the employees who had chosen to remain in pre-revised scale.

9. The state of pleadings as above and the stand of the parties being unclear, this Court is of the considered view that any judicial pronouncement on the construction of the ROP Rules, 2009 and its subsequent amendments, the ROP Rules, 2017 and the memorandums issued from time to time thereunder including the memorandum dated 26.08.2019, would not be proper at this stage. Any determination on such inchoate and incomplete pleadings and lack of clarity on the part of the appellant state on the interpretation of the ROP Rules, its subsequent amendments, and the memorandum dated 26.08.2019 – would not be proper since it will have repercussion in matters of pay fixation of not only the writ petitioners but other employees having substantial financial implications.

10. As such, we deem it proper to remit the matter to the appellant-department to arrive at a considered decision on this issue. Writ petitioners/respondents herein are allowed liberty to make representation duly supported with all relevant facts and documents and the relevant ROP Rules and its amendments and the circulars/memorandums issued from time to time on their grievances. Such representation be made before the competent authority/appellant No.4-Director General of Police, Government of Tripura. Needless to say, the competent authority, if necessary, after consultation with the concerned departments such as the Home Department and Finance Department would arrive at an informed decision on this issue in accordance with law within a period of 16(sixteen) weeks from the date of receipt of copy of the representations of the writ petitioners/respondents herein.

11. Let it be made clear that since the matter is being remanded to the competent authority to take a fresh decision, any observation made hereinabove as regards the construction of the ROP Rules including the memorandum dated 26.08.2019 shall not be treated as comments on the interpretation of those Rules and the aforesaid memorandum. The impugned judgment is accordingly set aside.

12. Writ appeals are disposed of in the above manner. Pending application(s), if any, shall also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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