

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.570/2023

1. Bibhu Debi Debbarma, D/O. Lt. Birulal Debbarma, Resident of Vill.-Rangachara, P.O.-Sikaribari, P.S.-Ambassa, District-Dhalai, Tripura, Pin-799288 (Age-35 years).

2. Uttam Debnath, S/O. Digendra Debnath, Resident of West Lalchari, P.O.-Balaram Bazar, District-Dhalai, Tripura, Pin-799204 (Age-31 years).

..... Petitioner(s).

V E R S U S

1. The State of Tripura, (To be represented by) the Secretary, Education (School) Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN-799010.

2. The Secretary, Finance Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN-799010.

3. The Director of Secondary Education, Government of Tripura, Agartala, West Tripura, Pin-799001.

.....Respondent(s).

Along with

WP(C) No.571/2023

1. Sanjoy Rudra Paul, S/O. Moanoranjana Rudra Paul, R/O. Kashipur Mission Road, Reshambagan, East Agartala, West Tripura, Pin-799008 (Age-36 years).

2. Prasenjit Nath, S/O. Mrityunjoy Nath, R/O. Vill. & P.O.-Rajnagar Laxmipur, P.S.-Dharmanagar, Dist.-North Tripura, Pin-799254 (Age-32 years).

3. Sumen Kanti Nath, S/O. Birendra Kumar Debnath, R/O. Vill. & P.O.-Kadamtala, District-North Tripura, Pin-799261 (Age- 32 years).

4. Sudipta Choudhury, D/O. Gouranga Choudhury, R/O. Vill. & P.O.-Pecharthal, Unakoti Tripura, Pin-799263 (Age-32 years).

5. Shatabdi Majumder, D/O. Sukhendu Bikash Majumder, R/O. Ranirbazar, Gopal Road, P.O.-Ranirbazar, Dist.-West Tripura, Pin-799035 (Age-32 years).

6. Shilpi Das, W/O. Indrajit Bhowmik, R/O. Vill. & P.O.-Mariamnagar, District-West Tripura, P.S.-East Agartala, Pin-799008 (Age-32 years).

7. Simal Das, S/O. Kunja Mohan Das, R/O. Vill. & P.O.-Rangamati, P.S.-Birganj, Dist.-Gomati, Tripura, Pin-799101 (Age-32 years).

..... Petitioner(s).

V E R S U S

1. The State of Tripura, (To be represented by) the Secretary, Education (School) Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN-799010.

2. The Secretary, Finance Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN-799010.

3. The Director of Secondary Education, Government of Tripura, Agartala, West Tripura, Pin-799001.

.....Respondent(s).

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate,
Mr. Dipjyoti Paul, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment : **25th July, 2024.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel for the petitioners. Also heard Mr. Kohinoor N Bhattacharyya, learned Government Advocate and Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the respondents-State.

2. Both the writ petitions are being heard and decided together as they raise common legal issues. The factual position in respect of the petitioners in both the writ petitions are also same and one. The writ petitioners joined service as Post Graduate Teachers and Graduate Teachers under the State of Tripura after coming into force of the New Pension Scheme introduced vide notification dated 13.07.2018 w.e.f. 01.07.2018. They also submitted an undertaking in the prescribed format in terms of Clause-(xv) of the notification

dated 13.07.2018 (Annexure-7) at the time of their appointment which is extracted hereunder:

"I understand and accept that Government servants joining the service of the State Government on or after 1st July 2018 shall not be governed by the existing Central Civil Services (Pension) Rules, 1972 (as adopted in the State of Tripura) and orders issued thereunder from time to time and that their pension and other retirement benefits will be governed by a set of new Pension Rules, which are being formulated in line with the Contributory Pension Scheme announced by Government of India and going to be notified in due course."

These undertakings were given after their joining. Earlier the petitioners in both the writ petitions had approached this Court for a direction upon the respondents to bring them under the Old Pension Scheme vide WP(C) No.608 of 2022 and WP(C) No.609 of 2022. Both the writ petitions were disposed of by order dated 25.04.2023 directing the writ petitioners to file separate representations before the competent authority for redressal of their grievances. The representations filed by the petitioners had been rejected vide memo dated 07.08.2023 and 08.08.2023 in WP(C) No.570 of 2023 and WP(C) No.571 of 2023 respectively, which are impugned herein.

3. Common reliefs have been prayed for in both the writ petitions, *inter alia*, for cancellation of the memo dated 21.06.2022 issued by the Director of Secondary Education, Government of Tripura whereby the Directorate of School Education ordered that employees joining the service of the State Government on or after 1st July, 2018 shall not be governed by the existing Central Civil Services (Pension) Rules, 1972 (as adopted in the State of Tripura) and orders issued thereunder from time to time. Their pension and other retirement benefits will be governed by a new set of Pension Rules being formulated in line with the Contributory Pension Scheme of the Government of

India (hereinafter NPS). They shall also not be entitled to General Provident Fund. The NPS shall also be mandatory for fixed pay employees under the State Government who are being appointed to a fixed pay post created by keeping regular pay scale post in abeyance on or after 1st July, 2018 (Annexure-18). Petitioners have also laid challenge to the order of rejection dated 07.08.2023/08.08.2023 (Annexure-21 are of such nature in case of petitioner) issued by the Director of Secondary Education, Tripura whereby their representations had been rejected. The grounds of rejection are as under:

"WHEREAS, Sri Debnath has joined in the Government service in the post of PGT on 29-10-2018 i.e. after adoption & coming into force of the NPS for State Government employees etc. w.e.f. 01-07-2018 by signing and accepting the terms & conditions of New Pension Scheme and submitting the undertaking in this respect while submitting joining report;

AND

WHEREAS, it is settled Law that mere selection for a post does not create any vested interest and legal right for any such selected candidate at any time/date prior to actual appointment or joining in the post and so employee cannot legally claim for any benefit which existed prior to his/her date of appointment;

Now, therefore, on careful consideration and examination of the representation of the petitioner, in absence of any further Notification or change in the provisions of the notification dated 13.07.2018 of the Finance Department (Pension Cell), Government of Tripura by the appropriate authority/State Government in the Finance Department (Pension Cell), the petitioners claim for benefit of Old Pension Rules and facility of GPF cannot be allowed by this authority/Department as he joined the service after 30.06.2018. Hence, the representation of the petitioners having been considered, stands rejected in the light of above reasons/grounds."

(rejection order in respect of petitioner Sri Uttam Debnath, PGT)

Similar orders of rejection had been issued in respect of all the writ petitioners. Petitioners have also prayed for a direction upon the respondents to bring them under the cover of Old Pension Scheme in view of the fact that the advertisement followed by selection process for the post of Post Graduate Teacher and Graduate Teacher was completed before 01.07.2018 and the offers of appointment were also issued before 01.07.2018, i.e. on 30.06.2018. Their joining happened after 01.07.2018 due to failure of

the respondents to act promptly. Petitioners also prayed for consequential reliefs and to be treated under the General Provident Fund Scheme.

4. The chronology of facts as furnished by the writ petitioners are not in dispute and as such, are referred to hereinafter:

(a) The Member Secretary, TRBT, vide notifications dated 17.11.2017 (Annexure-1) invited online applications from Indian Nationals having permanent residence in Tripura for selection to the post of Post Graduate Teacher (PGT) and Graduate Teacher under Secondary Education Directorate, Education (School) Department, Government of Tripura.

(b) The Controller of Examinations, TRBT, vide Notice dated 29.03.2018 (Annexure-2) informed all concerned about the detailed programme in connection with the Selection Test for Graduate Teacher (STGT), 2018 and Selection Test for Post Graduate Teacher (STPGT), 2018.

(c) The Controller of Examinations, TRBT, vide Notice dated 31.05.2018 (Annexure-3) informed that the provisional results of STGT and STPGT, 2018 were published on the official website of TRBT.

(d) The Member Secretary, TRBT, vide notifications dated 26.06.2018 (Annexure-4) recommended a list of names/candidates for recruitment to the post of Post Graduate Teacher and Graduate Teacher.

(e) The Director of Secondary Education, Government of Tripura vide memorandums dated 29.06.2018 and 30.06.2018 (Annexure-5) issued Offers of appointment to the petitioners.

(f) The Principal Secretary, Finance Department (Pension Cell), Government of Tripura issued Notification dated 13.07.2018 (Annexure-7) whereby it was ordered that employees joining the service of the State Government on or after 1st July, 2018 shall not be governed by the existing Central Civil Services (Pension) Rules, 1972 (as adopted in the State of Tripura) and their pension and other retirement benefits will be governed by a new set of Pension Rules being formulated in line with the Contributory Pension Scheme of the Government of India (hereinafter NPS).

(g) The Director of Secondary Education, Government of Tripura vide memorandum dated 09.10.2018 (Annexure-6) issued posting order to the petitioners.

(h) Petitioners have placed reliance on the communication of the Deputy Secretary, Department of Pension & Pensioners' Welfare, Government of India vide office memorandum dated 17.02.2020 (Annexure-8) according to which the Central Government employees whose selection for appointment had been finalized before 01.01.2004, but who joined Government Service on or after 01.01.2004 shall be entitled to pension coverage under CCS (Pension) Rules, 1972.

(i) On 10.06.2022 and 14.06.2022 the petitioners submitted representations to the Director of Secondary Education seeking benefit of the Old Pension Scheme under CCS (Pension) Rules, 1972.

(j) The Director of Secondary Education, Government of Tripura vide memorandum dated 21.06.2022 (Annexure-18) informed the petitioners that they are not entitled to get the benefit of the Old Pension Scheme as they had joined their service on or after 01.07.2018.

(k) Petitioners further rely on the communication of the Additional Secretary to the Government of India, Department of Pension and Pensioners' Welfare,

Ministry of Personnel, Public Grievances and Pensions, vide Office memorandum dated 03.03.2023 (Annexure-16) which dealt with the issue of coverage under CCS (Pension) Rules, 1972 in place of National Pension System of those Central Government Employees who were recruited against posts/vacancies advertised/notified for recruitment on or before 22.12.2003.

(l) Petitioners filed WP(C) No.608 of 2022 and WP(C) No.609 of 2022 praying for a direction upon the respondents to bring them under the Old Pension Scheme. This Court vide judgment and order dated 25.04.2023 directed the petitioners to file separate representation seeking reliefs.

(m) In compliance with the aforesaid judgment and order, each of the petitioners submitted identical representation to the Secretary, Education (School) Department, Government of Tripura and Director of Secondary Education, Government of Tripura on 11.05.2023 (Annexure-20) seeking the benefit of pension under CCS (Pension) Rules, 1972.

(n) The Director of Secondary Education, Government of Tripura vide memorandums dated 07.08.2023/08.08.2023 (Annexure-21) conveyed that on consideration of the representations submitted by the petitioners seeking benefit of pension under CCS (Pension) Rules, 1972 and the prayer of the petitioners are rejected.

5. On behalf of the writ petitioners, Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel, has, *inter alia*, made the following submissions:

(i) That, the delay in the process of recruitment on the part of the Government should not be to the detriment of the writ petitioners since the advertisement for selection to the post of Post Graduate Teacher under the Secondary Education Directorate was issued on 17.11.2017. Upon conclusion of the selection process, the offers of appointment were also issued before 01.07.2018 in favour of the writ petitioners, i.e. 30.06.2018. Annexure-5 is a sample offer of appointment in case of one of the writ petitioners in WP(C) No.570 of 2023;

(ii) Learned senior counsel for the writ petitioners has drawn the attention of this Court to the specific terms of appointment, specifically at paragraph-7 which indicates that the appointee shall accept the offer of appointment on the terms indicated above and should communicate acceptance on 24.07.2018 or 25.07.2018 to the office with all required documents. Failure

to report for duty by the prescribed date would lead to cancellation of the offer. This condition was incorporated to defeat the legitimate claim of the writ petitioners of being covered under the Old Pension Scheme since the offer of appointment was issued before the effective date of the New Pension Scheme i.e. 01.07.2018;

(iii) Learned senior counsel for the writ petitioners contends that the writ petitioners submitted their undertaking at the time of their posting. The same was not a part of the offer of appointment.

(iv) Learned senior counsel for the writ petitioners further submits that acceptance of the offer of appointment with an undertaking to abide by the New Pension Scheme would not defeat the claim of the petitioners to raise their grievances as the petitioners were in an unequal bargaining position with the employer. In this regard, learned senior counsel for the petitioners has placed reliance upon the decision of the Apex Court in the case of *Somesh Thapliyal & another vs. Vice Chancellor, H.N.B. Garhwal University & another [Civil Appeal No(s).3922-3925 of 2017]*, specifically paragraphs-37, 43 and 44;

(v) Learned senior counsel for the petitioner has placed reliance upon a decision of the Delhi High Court rendered in the case of *Inspector Rajendra Singh & others vs. UOI & others [WP(C) No.2810/2016]* dated 27.03.2017 (Annexure-12) in relation to appointment of Sub-Inspectors in BSF, CISF, CRPF and ITBP Force. It is submitted that though the Old Pension Scheme under the CCS (Pension) Rules, 1972 was replaced by a notification dated 22.12.2003 by Contributory Pension Scheme implemented w.e.f. 01.01.2004 but the learned Delhi High Court held that there can be no

discrimination between batchmates only because some were, who had been declared unfit like the petitioner, had to appear before review Medical Board while result of others were declared in the meantime, i.e. before the coming into force of the New Pension Scheme from January, 2004. The review Medical Board was held after six months. Delay in approaching the Court would not be a bar to entertain the writ petition unless the consequence would be of unsettling things already settled. However, flagrant discrimination cannot be allowed to continue only because of delay. The Delhi High Court, therefore, directed the respondents-Union of India to bring the petitioners under the cover of the Old Pension Scheme. He has also placed reliance on a decision of the Delhi High Court in the case of *Shyam Kumar Choudhary & others vrs. Union of India & others* [WP(C) No.1358/2017] dated 09.04.2019 (Annexure-10). It is submitted that the Apex Court had dismissed the Special Leave Petitions preferred by the Union of India against both these judgments by orders dated 27.09.2019 and 08.01.2018 respectively (Annexure-11 and 13);

(vi) Learned senior counsel for the petitioners has also placed reliance upon a decision of the learned Single Bench of Madras High Court in the case of *S. Achuthan vrs. The Secretary to Government, Educational Department, Government of Tamilnadu* [Writ Petition No.1006 of 2019] wherein also the petitioner who was appointed as a Mathematics Teacher through direct recruitment by the Teachers' Recruitment Board was asked to join on a date after 01.04.2003 by which date the Contributory Pension Scheme had come into force. In those circumstances, the learned Court directed the respondents to consider the representation of the petitioner and bring him under the Old Pension Scheme which was prevailing prior to the implementation of

the G.O.Ms.No.259 dated 06.08.2003. Based on these grounds, learned senior counsel for the petitioners submits that the benefit of cover of the Old Pension Scheme which is more beneficial in nature has been denied to the writ petitioners on account of delay and laches in the recruitment process even though the offers of appointment were issued a day before the effective date of implementation of the New Pension Scheme, i.e. 01.07.2018. Since the petitioners were in an unequal bargaining position, the undertaking rendered by them should not come in the way to grant relief in favour of the petitioners as petitioners were left with no other choice. Learned senior counsel for the petitioners submits that the Old Pension Scheme is much more beneficial compared to the Contributory Pension Scheme introduced w.e.f. 01.07.2018. Therefore, the orders of rejection guided by the undertaking given by the petitioners are fit to be quashed by this Court. In matters of construction of beneficial provisions, such as, the Pension Scheme, the Court should lean in favour of a liberal construction of the statute or scheme rather than adopting a strict and pedantic approach. Therefore, the impugned orders may be set aside. The respondents be directed to bring the petitioners under the cover of the New Pension Scheme.

6. Mr. Kohinoor N Bhattacharyya, learned Government Advocate, has strongly opposed the grounds of challenge urged on behalf of the petitioners. He has made the following submissions, *inter alia*, to support the stand of the respondents-Government so far as the cover of New Pension Scheme upon the writ petitioners is concerned:

Learned counsel for the respondents submits that the petitioners have with eyes wide open consciously accepted and signed the undertaking in the prescribed format required as per the notification dated 13.07.2018 bringing into force the New Pension Scheme w.e.f. 01.07.2018. The writ petitioners have categorically undertaken that having joined on or after 01.07.2018 their services shall not be governed by the existing Central Civil Services (Pension) Rules, 1972 and orders issued thereunder from time to time. Their pension and other retirement benefits will be governed by a set of New Pension Rules which are being formulated in line with the Contributory Pension Scheme announced by the Government of India and going to be notified in due course. In support of his contention, learned Government Advocate has referred to a decision of the Rajasthan High Court in the case of *Shankar Lal vrs. University of Rajasthan & another* reported in *2002 SCC OnLine Raj 11* [Paragraph-10]. He has also referred to a decision of Delhi High Court in the case of *Satya Dev Prajapati & others vrs. Delhi High Court through its Registrar General & another [WP(C) No.7619/2021]* judgment dated 21.11.2022 (paragraphs-17 onwards).

7. Learned Government Advocate has further submitted that the undisputed chronology of dates and events also unambiguously show that there has been no delay in the recruitment process on the part of the respondent-Government. The advertisement was issued on 17.11.2017 for appointment to the post of Post Graduate Teacher and within 7(seven) months thereof, the offers of appointment were issued to the writ petitioners on 30.06.2018. If there was any deliberate motive to deny the benefit of Old Pension Scheme to the writ petitioners, the offer of appointment itself could be delayed by further few

days since the New Pension Scheme came into effect from 01.07.2018. It is submitted that in ordinary course of offer of employment, the appointees are granted sufficient time to accept joining with all supporting documents. As such, the condition No.(vii) in the offer of appointment asking the writ petitioners to join on 24.07.2018 or 25.07.2018 with required documents was not unusual or suffered from deliberate delay. He submits that delay and laches in the process of recruitment as being urged on behalf of the writ petitioners is not made out on the facts of the case. As such, the decision of the Delhi High Court relied upon by the writ petitioners are distinguishable on facts.

8. Learned Government Advocate has further submitted that fixation of a cut-off date for implementation of the New Pension Scheme, i.e. 01.07.2018 cannot be said to be arbitrary or unreasonable. He submits that in the case of *State of Tripura & others vrs. Anjana Bhattacharjee & others* reported in *2022 SCC OnLine SC 1071*, the Apex Court at paragraph-18 has also opined that financial constraint of the Government or employer could be a valid ground for fixation of a cut-off date. The present writ petitioners have, however, not been able to demonstratively establish that the fixation of cut-off date, i.e. 01.07.2018 was arbitrary or unreasonable intended to deny the benefit of the cover of Old Pension Scheme to them.

Learned G.A. for the State has referred to Clause-2(iv) of the Offer of appointment which mandates the appointees to abide by the other conditions and relevant rules and orders in force from time to time.

Based on these submissions, learned Government Advocate has prayed that the impugned orders are proper in the eye of law and do not

deserve any interference. The writ petitions may be dismissed as devoid of merits.

9. Mr. Dipankar Sarma, learned Addl. Government Advocate, has adopted the arguments of learned Government Advocate, and further supplemented it relying upon a recent decision of the Hon'ble Supreme Court rendered in the case of *State of U.P. & others vrs. Virendra Kumar & others [Civil Appeal Nos.6622-6623 of 2022]* on the issue of implementation of the New Pension Scheme and the undertaking given by the appellants therein to be bound by the Old Pension Scheme. He specifically relies upon the opinion rendered by the Apex Court at paragraph-45(iv) of the judgment. It is submitted that the situation in the said case was reverse. The appellants after having furnished an undertaking to be covered under the Old Pension Scheme, later on realized that the terms of the New Pension Scheme were more beneficial and sought relief for being brought under the New Pension Scheme. The Apex Court in those circumstances categorically held that after having given an undertaking to be covered under the Old Pension Scheme, the appellants could not be allowed to turn around and seek relief for being brought under the New Pension Scheme. Based on these submissions, learned counsels for the State have urged that the writ petitions may not be entertained as no tenable grounds of law or facts are made out in support of their prayer.

10. I have considered the submissions of learned counsel for the parties and also taken note of the relevant foundational facts and averments as pleaded by them and borne from record.

11. The chronology of dates and events which have been succinctly referred to in the opening paragraphs of this order indicate that the advertisement for appointment to the post of Post Graduate Teacher under the Secondary Education Directorate was issued on 17.11.2017. After about 7(seven) months and few days upon conclusion of the selection process, the offers of appointment were issued in favour of the petitioners on 30.06.2018. The New Pension Scheme was brought into effect from 01.07.2018 by a notification dated 13.07.2018 which has been annexed as Annexure-7 to the writ petition. The process of recruitment, therefore, cannot be said to be overly delayed resulting in deliberate denial of the benefit of Old Pension Scheme to the petitioners as alleged. Had there been any such intention, the recruitment process could have lingered further and the offers of appointment also could have been issued after coming into force of the New Pension Scheme w.e.f. 01.07.2018. In any such process of recruitment, a normal joining time is granted to the appointees to enable them to accept joining with all supporting documents and credentials. The offer of appointment asked them to accept the offer and submit joining by 24/ 25.07.2018 with supporting documents. Since the New Pension Scheme had come into force by then, the writ petitioners were also required to submit an undertaking in the prescribed format as indicated at paragraph-(xv) of the notification dated 13.07.2018 which is in the following terms:

"I understand and accept that Government servants joining the service of the State Government on or after 1st July 2018 shall not be governed by the existing Central Civil Services (Pension) Rules, 1972 (as adopted in the State of Tripura) and orders issued thereunder from time to time and that their pension and other retirement benefits will be governed by a set of new Pension Rules, which are being formulated in line with the Contributory Pension Scheme announced by Government of India and going to be notified in due course."

12. The contention that the petitioners could not be bound by their undertaking on account of their unequal bargaining position cannot be accepted since the condition or undertaking prescribed under the notification dated 13.07.2018 applied for all Government servants who accept joining in service under the State Government after 01.07.2018 knowing fully well that the New Pension Scheme has come into force from 01.07.2018. Only on account of the fact that the writ petitioners later on realized that the terms of the Old Pension Scheme were more beneficial, they raised their grievances by representations in June, 2022 and thereafter approached the Writ Court in the year 2022. The representations of the writ petitioners were rejected as they had consciously undertaken to abide by the New Pension Scheme and no exception thereto could be made. It is trite to state that the fixation of a cut-off date for implementation of any such scheme is likely to entail hardship in favour or against the person lying on either side of the cut-off date. The fixation of the cut-off date as arbitrary or unreasonable is not a ground of challenge. The terms and conditions of the New Pension Scheme introduced w.e.f. 01.07.2018 in the State of Tripura are also not under challenge. As it appears, the Old Pension Scheme was replaced by the Government of India in the year 2004 but the State of Tripura continued with the Old Pension Scheme till 30.06.2018. Fixation of a cut-off date on grounds of financial constraint has been held to be a valid ground as per the judgment rendered by the Apex Court in the case of *Anjana Bhattacharjee* (supra).

13. Petitioners have placed reliance upon the case of *Somesh Thapliyal* (supra) in support of the plea that the bargaining power is with the

employer and the employees like the writ petitioners are left with no option but to accept the conditions dictated by the authority. Therefore, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law. He is not estopped from questioning it at a stage where he finds himself aggrieved. In the said case, the appellants were appointed on contractual basis through a process of selection for a limited period. They still recorded their protest while joining but no heed was paid. When they were allowed to continue by extending their services, they remained under the bona fide belief that their appointment is substantive in character and they will be made permanent/confirmed immediately after the permanent posts are sanctioned in the Department of Pharmaceutical Sciences. However, after an advertisement was issued on 29.08.2011 by the respondent-Central University, they realized that they are not going to be confirmed against permanent post but a fresh recruitment exercise has been initiated by the respondent-University. Therefore, they were compelled to approach the Court for relief. In the present case, the writ petitioners did not lodge any protest while accepting offer of appointment and in fact, submitted their undertaking to abide by the terms of the New Pension Scheme after submitting their joining. As such, reliance upon the said decision does not come to the aid of the writ petitioners.

14. The writ petitioners have further placed reliance upon two decisions of the Delhi High Court. In the case of *Inspector Rajendra Singh* (supra), the Delhi High Court found that there was delay in appointment of the writ petitioners vis-à-vis other persons out of the same recruitment process which had commenced few years before the New Pension Scheme was

notified. The review medical examination of the petitioners was held after the New Pension Scheme came into effect. Therefore, the appointment process took some more time. In those circumstances, the learned Delhi High Court felt that there could not be discrimination between batchmates only because some, like the petitioners were subjected to review Medical Board while the result of others were declared before the New Pension Scheme came into force. The ground of delay in approaching the Court was also negated on the principle that illegality must be redressed. In the present case, petitioners do not allege discrimination between similarly situated persons who were appointees of the same recruitment exercise. In fact, writ petitioners and others have joined services after coming into force of the New Pension Scheme and thereafter submitted their undertaking. As such, the decision of the Delhi High Court also does not come to their rescue.

15. Learned counsel for the respondents-State has also rightly placed reliance upon the case of **Virendra Kumar** (supra) rendered by a three Judge Bench of the Apex Court. The Apex Court at para 45(iv) of the judgment held that those officers and employees who had accepted the benefit under the Old Pension Scheme and had also given an undertaking to abide by it would not be entitled to benefits under the New Pension Scheme. The present petitioners appear to have become wiser after about 4(four) years of accepting the offer of appointment and have approached this Court in the year 2022 in the first round of litigation for being brought under the Old Pension Scheme after having undertaken to be bound by the New Pension Scheme made effective from 01.07.2018.

16. In the light of the facts and circumstances and the reasons recorded hereinabove, this Court, therefore, does not find any grounds to interfere in the orders of rejection dated 07.08.2023 and 08.08.2023 passed by the Director of Secondary Education, Government of Tripura on the representations of the petitioners. In view of the discussions made hereinabove, this Court also does not find any tenable grounds of law made out to direct the respondents to bring the writ petitioners under the cover of the Old Pension Scheme. Accordingly, both the Writ petitions are dismissed.

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

(APARESH KUMAR SINGH), CJ

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