

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 601 OF 2023

Dr. Suman Adhikari, son of Sri Samarjit Adhikari,
Resident of Tithai Road, Padmapur, Dharmanagar, North Tripura,
Pin-799250. (Age-43 years)

.....**Petitioner.**

Vs.

- 1. Indira Gandhi National Open University (IGNOU)** (To be represented by) The Registrar, Indira Gandhi National Open University (IGNOU), Office of the Registrar, IGNOU, New Delhi, Maidan Garhi, New Delhi, Pin 110068.
- 2. The Director, Academic Coordination Division, Indira Gandhi National Open University (IGNOU)**, Office of the Director, Academic Coordination Division, IGNOU, New Delhi, Maidan Garhi, New Delhi, Pin 110068.
- 3. The Director, Regional Centre, Itanagar, IGNOU**, HMCT Building Rajiv Gandhi Govt. Polytechnic Vivek Vihar, Itanagar, Arunachal Pradesh, Pin 791113.
- 4. The Regional Director, Agartala Regional Centre, IGNOU**, MBB College, Science Block, Agartala, West Tripura, Pin 799004.
- 5. The State of Tripura** (to be represented by) **The Secretary, Department of Higher Education**, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S. New Capital Complex, Agartala, West Tripura, Pin 799010.
- 6. The Director**, Directorate of Higher Education, Government of Tripura, 1st Floor, Shiksha Bhawan, Office Lane, Agartala, West Tripura, Pin 799001.

..... **Respondents.**

For the petitioner : Mr. P. Roy Barman, Sr. Counsel.
Mr. Dipjyoti Paul, Advocate.

For the respondents : Mr. M. Debbarma, Addl. G.A.
Mr. D. Sarkar, Advocate.

Date of hearing and
date of delivery of
judgment & Order : **27.08.2024.**

Whether fit for reporting : No

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order (Oral)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. D. Paul, learned counsel appearing for the petitioner. Also heard Mr. D. Sarkar, learned counsel appearing for the Indira Gandhi National Open University (for short, 'IGNOU'), i.e. respondent nos. 1, 2, 3 & 4 respectively and Mr. M. Debbarma, learned Addl. G.A. appearing for the State-respondents.

2. The case of the petitioner is that while he was discharging his duties as Assistant Professor under the Department of Higher Education, Government of Tripura, he applied for the post of Assistant Regional Director (North-East Region) having pay scale of Level 10 [Rs.57,700-1,82,400/-] on deputation in pursuance of the Advertisement No.01/2021/ACD, dated 05.08.2021, issued by IGNOU, Maidan Garhi, New Delhi. The petitioner was selected and was issued with an offer of appointment dated 16th March, 2022 in the pay scale of Rs.57,700-1,82,400/- for a period of two years. One of the terms and conditions mentioned in the said offer of appointment was that *the petitioner would have to be opted either to get his pay fixed in the deputation post under the operation of the normal rules or to draw pay of the post held by him in his parent department plus a Deputation (Duty) Allowance in accordance with and, subject to the conditions, as modified from time to time and such other general or special orders issued by the Govt. of India.* The petitioner opted for the second one i.e. he joined the post on the basis of pay he was drawing at his parent department *plus* the Deputation (Duty)

Allowance. The grievance of the petitioner is that while discharging his duties under the respondent nos. 1 to 4 as Assistant Regional Director, the Govt. of Tripura had revised the pay scale of Assistant Professor on 13th January, 2023 having retrospective effect from 18th April, 2022. The petitioner had joined on 20.04.2022. After a few months of his joining to the said post, the petitioner raised a claim that the respondent nos. 1 to 4 did not grant him the revised pay scale of Rs.68,900-2,05,500/- which was fixed for Assistant Professor under the Department of Higher Education, Govt. of Tripura and he was denied the said scale of pay.

3. Mr. Roy Barman, learned senior counsel has strenuously pressed Clause 2 of the offer of appointment dated 16th March, 2022 to fortify his submission that the respondent nos. 1 to 4 arbitrarily denied the revised pay scale to the petitioner had he been in his parent department i.e. under the Department of Higher Education, Govt. of Tripura. To fortify his submission, learned senior counsel has emphasized on Sub-clause i) of Clause 2 of the offer of appointment dated 16th March, 2022.

4. Learned senior counsel appearing for the petitioner has laid much emphasis on the second part of Sub-Clause i) of Clause 2 extracted here-in-above which says that the petitioner would be entitled—‘.... *to draw pay of the post held by you in your parent department plus a Deputation (Duty) Allowance in accordance with and, subject to the conditions, as modified from time to time and such other general or special orders issued by the Govt. of India.*’

5. To substantiate his submission that this part of Clause 2 quoted here-in-above, obligates the respondent nos. 1 to 4 i.e. the authority of IGNOU

to pay him the scale of pay which would be fixed by the Govt. of Tripura against the post he would have held in his parent department i.e. under the Department of Higher Education, Govt. of Tripura and denial of the same is illegal, arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution of India. To clarify further, learned senior counsel appearing for the petitioner submitted that had the petitioner been in his parent department during those periods, then, he would have entitled the benefit of the revision of pay scale undertaken by the Govt. of Tripura enhancing for the post of Assistant Professor from the pay scale of Rs.57,700-1,82,400/- to Rs.68,900-2,05,500/-.

6. On the other hand, Mr. Sarkar, learned counsel appearing for the respondents-IGNOU submitted that in terms of the advertisement dated 05.08.2021 [*Annexure-1* to the writ petition] the scale against the post of Assistant Regional Director (North-East Region) was at Level 10 [Rs.57,700-1,82,400/-] of 7th CPC Pay matrix. Offer of appointment was issued in favour of the petitioner on the basis of the said pay scale. In view of this, the IGNOU cannot grant him the pay scale more than that of the pay scale mentioned in the terms of the appointment letter. It is further submitted that the petitioner is not entitled to the revised pay scale as was revised by the Government of Tripura while he was on deputation under the IGNOU. Learned counsel further submitted that the petitioner had accepted all the terms and conditions mentioned in the offer of appointment.

7. I have considered the submissions of learned counsel appearing for the parties and perused the documents enclosed with the writ petition as well as in the counter affidavits. In the opinion of this Court, the entire case of the petitioner revolves around the second part of Sub-clause i) of Clause 2

which also has strenuously stressed upon by learned senior counsel appearing for the petitioner. At the cost of repetition, I would like to reproduce again this part of Clause 2 of the offer of appointment dated 16th March, 2022, which reads as under:

“.... to draw pay of the post held by you in your parent department plus a Deputation (Duty) Allowance.....”

8. By dint of the said part of Clause 2, it is the plea of the petitioner as argued by learned senior counsel that the said part of Clause 2 entitles the petitioner to get all the benefits which would be provided by the Govt. of Tripura against the post he was supposed to be held under his parent department, i.e. the Department of Higher Education, Govt. of Tripura. To say it otherwise, according to learned counsel, this part of the Clause 2 obligates the authority of the IGNOU to pay the petitioner the revised pay scale of Rs. 68,900-2,05,500/- prescribed for the post of Assistant Professor under the Department of Higher Education, Govt. of Tripura as per revised pay rules.

9. To the context, I have noticed that the Govt. of Tripura had revised the pay scale of the post of Assistant Professor under the Department of Higher Education on 13th January, 2023 giving its effect from 18th April, 2022. Admittedly, after such revision of pay scale, the petitioner had submitted representation to the respondent nos. 1 to 4 to enhance his pay scale from Rs.57,700-1,82,400/- to Rs.68,900-2,05,500/- but, it was not sanctioned and the competent authority of the IGNOU had issued an office order No.37, dated 23rd January, 2023 stating *inter alia* that the petitioner will not be entitled to any further protection of pay if his pay is revised in his parent department under CAS (Level-12 and Level-13A under any circumstances. It is further stated that under that order, no further communication by the

petitioner would be entertained. It is noticed that in the said office order dated 23.01.2023, the pay scale of the petitioner was mentioned at Level 10 [Rs.57,700-1,82,400/-] *plus* Deputation (Duty) Allowances.

10. At this juncture, Mr. Roy Barman, learned senior counsel has submitted that the petitioner had resigned from the post of Assistant Regional Director under the respondent nos. 1 to 4 on 31.03.2023 [*Annexure-14* to the counter affidavit] for non-granting the benefit of re-fixation of pay scale by the Govt. of Tripura for the post of Assistant Professor under the Department of Higher Education, Govt. of Tripura.

11. Having regard to the central issue raised in the writ petition, I am to decide whether the petitioner is entitled to the benefit of re-fixation of pay scale, in terms of the Guidelines dated 17.11.2022 [*Annexure-10* to the writ petition], for the period of his deputation under the respondent-IGNOU.

12. To justify his claim, the petitioner mainly bent upon a part of Sub-clause (i) of Clause 2 of the offer of appointment dated 16th March, 2022 (*Annexure-2* to the writ petition). Clause 2 is one of the terms and conditions stipulated in the said appointment letter, which the petitioner had accepted. Since the entire case of the petitioner centers around Sub-clause i) of Clause 2, for brevity, it is reproduced hereunder:

“2. i) Your appointment is on deputation basis in the Academic Level 10 (Rs.57,700-1,82,400/-) of the 7th CPC pay matrix. During the period of deputation, you will have the option either to get your pay fixed in the deputation post under the operation of the normal rules or to draw pay of the post held by you in your parent department plus a Deputation (Duty) Allowance in accordance with and, subject to the conditions, as modified from time to time and such other general or special orders issued by the Govt. of India.”

13. On minute reading of Sub-clause i) of Clause 2, in our opinion, the said clause contains three components. In the first part of Sub-Clause i) the

petitioner was given the option that during the period of deputation his pay could not be fixed in the deputation post under the operation of the normal rules; under the second part the petitioner was given another option to draw pay of the post held by him in his parent department plus a deputation (duty) allowance; the third part spoke about that if the petitioner had opted for second part stated above, then, his service conditions on deputation basis under IGNOU including his pay and deputation (duty) allowance would be governed by and in accordance with and, subject to the conditions, as modified from time to time and such other general or special orders issued **by the Govt. of India.**

14. So, it is clear that after entry into the service on deputation, the service of the petitioner would be governed by the terms and conditions as would be issued by the Govt. of India time to time but not by the Govt. of Tripura.

14.1 Sub-clause ii), iii) & vii) of Clause 2 of the offer of appointment, in my opinion, are also relevant to decide the merits of the present writ petition, which read as under:

“ii) In addition to the basic pay, you will draw such other allowances as per Govt. of India rules and as determined by the University from time to time.

iii) You are requested to submit the last pay certificate from your present employer giving the details of your pay, post held, scale of pay of the post, whether the post held is substantive or otherwise and the next date of increment in the scale of pay etc.

vii) During the period of your appointment in this University, in addition to Govt. of India rules, you will be governed by the Act, Statutes, Ordinances and regulations of the University and other rules relating to the conditions of service applicable to other academic staff of the University modified from time to time.”

14.2 On careful reading of the above Clauses, I find that Sub-clause ii) of Clause 2 stipulates that in addition to the basic pay, the petitioner would be entitled to draw such other allowances as per Govt. of India rules and as determined by the University that is, IGNOU from time to time, which further crystallizes that this period of deputation service would not be governed by any rules made by the Govt. of Tripura. Similarly, Sub-clause vii) of Clause 2 clearly mentioned that during the period of his appointment under IGNOU, his service would be governed by the Acts, Statutes, Ordinances and Regulations of the University and other related rules relating to the conditions of service applicable to other academic staff of the University in addition to the Govt. of India rules. So, if we read meticulously all the terms and conditions conjointly mentioned in the offer of appointment, then, this Court would have no difficulty to come to a finding that the second part of Sub-clause i) of Clause 2 was not intended to provide any benefits of any rules that would also include the revised pay rules after appointment of the petitioner on deputation under the respondent nos. 1 to 4.

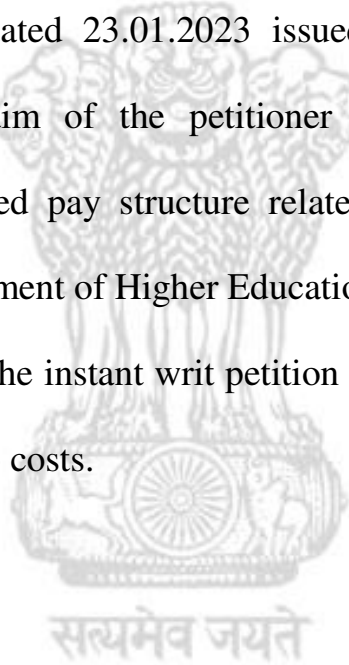
15. On plain reading of this part of the Clause 2, it clearly crystallizes that this part would be applicable only at the entry time of the petitioner into the service under the respondent nos. 1 to 4 not afterwards. This reasoning of mine is further fortified by the pay scale mentioned in the advertisement against the post of Assistant Regional Director (North-East Region) where the pay scale has specifically been mentioned at Level 10 (Rs.57,700-1,82,400/-). When the pay scale of Assistant Regional Director (North-East Region) has been specified in the advertisement, the respondents-University cannot have any obligation to pay such pay scale which is more than that of the pay scale mentioned in the advertisement as well as in the offer of appointment issued in

favour of the petitioner. At the time of entry into service, the respondents-University accepted the pay scale applicable to the petitioner for the post of Assistant Professor under the Higher Education Department, Govt. of Tripura.

16. Having gone through the terms and conditions mentioned in the offer of appointment and the advertisement dated 05.08.2021, in my ultimate analysis, the second part of Sub-clause i) of Clause 2 should not be read isolatedly, but, it must be read conjointly with other clauses mentioned in the advertisement as well as the offer of appointment dated 16th March, 2022 [Annexure-2 to the writ petition].

17. Having held so, I do not find any merit to interfere with the impugned Office Order dated 23.01.2023 issued by the Director (ACD), IGNOU rejecting the claim of the petitioner for re-fixation of pay in conformity with the revised pay structure related to the post of Assistant Professor under the Department of Higher Education, Govt. of Tripura.

Accordingly, the instant writ petition stands dismissed. However, there shall be no order as to costs.



JUDGE

SANJAY GHOSH

Digitally signed by SANJAY GHOSH
Date: 2024.09.07 16:22:25 +05'30'

sanjay