

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 855 OF 2022

Sri Arup De, s/o Lt. Manindranath De,
R/o Road No.4, Agartala, P.O. Ramnagar, P.S. West Agartala.

.....**Petitioner.**

Vs.

- 1. The State of Tripura**, to be represented by the Principal Secretary,
Tribal Welfare Department, Government of Tripura,
New Secretariat Complex, New Capital Complex, Agartala,
West Tripura, PIN-799010.
- 2. The Chairman**, Development Unit, World Bank Aided Rubber Project,
TW Building (Grd. Floor), P.N. Complex, P.O. Kunjaban,
Agartala, West Tripura, Pin-799006.
- 3. The Project Advisor**, Development Unit, World Bank Aided Rubber
Project, ST Corporation (1st Floor), Lake Chowmohani, Agartala.

..... **Respondents.**

For the petitioner : Mr. P. Roy Barman, Sr. Counsel.
Mr. Samarjit Bhattacharjee, Advocate.

For the respondents : Mr. P. Gautam, Advocate.

Date of hearing and : **20.08.2024.**
date of delivery of
judgment & Order

Whether fit for : Yes
reporting

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order (Oral)

By means of filing the instant writ petition, the petitioner has
prayed for granting him regular pay scale prescribed for the post of Assistant
Credit Officer.

2. The background facts of the instant case is that under Order dated
21-05-2008 issued by the Project Advisor, Development Unit, World Bank
Aided Rubber Project, Tripura, the petitioner was engaged in the Development

Unit purely on contract basis in the interest of public service to carry out the works relating to loan extended under Alternative Financing Arrangement, Accounts and Training, etc. In the said order, the remuneration of the persons to be engaged on contract basis was fixed at Rs.3000/- per month. The service of the petitioner was extended time to time. During the period of his service, at one point of time one pay scale was provided to the petitioner. The petitioner has drawn much emphasis on a memorandum dated 11th October, 1999 [**Annexure-3** to the writ petition] issued by the Govt. of Tripura whereby and whereunder two posts of Assistant Credit Officer were created in the scale of pay of Rs.6,500-12,300/-. From the said memorandum, it is evident that the said scale was provided for 6 (six) years w.e.f. October, 1999 till the end of 2005. Under another memorandum dated 23.12.2010 [**Annexure-6** to the writ petition], the pay scale of Assistant Credit Officer was revised with certain terms and conditions that would be applicable w.e.f. 01.01.2011. Under this memorandum, the pay scale of Assistant Credit Officer was prescribed as Rs.9,570-30,000/-, Pay Band-3 along with other allowances. Thereafter, vide memorandum dated 05.09.2014 [**Annexure-12** to the writ petition], it was communicated to the petitioner that in accordance with the decision taken by the Governing body in the Annual General Meeting held on 29.08.2014, the service of the petitioner was put on fixed pay basis for a sum of Rs.21,000/- only per month w.e.f. 1st September, 2014 onwards without any other allowances instead of the pay scale as prescribed under Memorandum dated 23.12.2010, which was treated to be cancelled. The State-respondents had issued another memorandum dated 18.11.2014 creating the post of Assistant Credit Officer in the Pay Band-3, Scale of Rs.9,560-30,000/-, Grade Pay- Rs.3,100/- under the Development Unit, World Bank Aided Rubber Project

for the period w.e.f. 01.09.2014 to 31.03.2015 subject to the following conditions:

- (a) 50% of the outstanding loan including interest should be recovered by 31st March, 2015;
- (b) The department may go for PDR cases for recovery of the loans through SDMs;
- (c) Further continuation of the 2(two) posts will depend upon fulfillment of conditions as indicated in (a) above.

2.1 It is apparent that memorandum dated 18.11.2014 was issued with the concurrence of the Finance Department dated 31.10.2014. Again, under memorandum dated 16.05.2015 two posts of Assistant Credit Officer in the scale of Rs.10,230-34,800, Grade Pay Rs.4600/- under Development Unit, World Bank Aided Rubber Project for the period from 01.04.2015 to 31.03.2016 were created subject to condition that 50% of the outstanding loan including interest should be recovered by 31st March, 2016. After completion of said period of one year, the State-respondent had issued memorandum dated 20-01-2017 [**Annexure-15** to the writ petition] creating two posts of Assistant Credit Officer from 01.04.2016 to 31.03.2017 in the Pay Band-3, Scale—Rs.10,230-34,800/-, Grade Pay Rs.4,600/- subject to condition that 50% of the outstanding loan including interest should be recovered by 31st March, 2017.

2.2 The grievance of the petitioner is that granting of regular pay scale has arbitrarily been stopped to him by the respondents on the pretext that the project has been facing financial crunch and his service is put on a fixed pay basis. From the memorandum dated 23.08.2022, it is revealed that fixed pay amount has been enhanced to Rs.25,000/- per month w.e.f. 01.09.2017.

2.3 The petitioner has challenged the change of salary from regular pay scale to fixed pay by way of filing a writ petition before this Court which

was registered as *WP(C) 674/2020*, titled as *Sri Arup De vs. the State of Tripura & Ors.* The said writ petition was disposed of vide judgment and order dated 30.05.2022. Learned Single Judge of this Court [S. Talapatra, J, as he then was] had made certain observations, which are according to me, relevant to decide the merits of the instant writ petition.

“18. While scanning the records, on that count the memorandum dated 18.11.2014 has been noticed. In the said memorandum, it has been stated that one post of Credit Officer in the PB-3 [Rs.9570-30,000/-] under the Development Unit had been sanctioned by the Government of Tripura. But the said creation was subject to the following three conditions:

“ (a) 50% of the outstanding loan including interest should be recovered by 31st March, 2015.

(b) The department may go for PDR Cases for recovery of the loans though SDMs.

c) Further continuation of the 2(two) posts will depend upon on fulfillment of condition as indicated in(a) above.”

Finally, the Society has been founded by the Government of Tripura for a special purpose - for channelizing small credits to the rubber growers and recovery of the said amount so that the bank does not find their credit at jeopardy.

19. It is therefore clear that the posts were tenure-based [contract] posts from the specialized cadres of Tripura Gramin Bank and Tripura State Cooperative Bank Limited. Creation of the posts as claimed by the petitioner does not mean the said post was created in the regular establishment with regular scale of pay. On the contrary, the post was created as the contract posts in the recommended pay scale. The petitioner has relied on, as stated earlier, on the memorandum dated 16.12.2009 [Annexure-6 to the writ petition]. This court would like to refer to the memorandum dated 23.12.2009, wherein it has been categorically stated as follows:

“In accordance with the decision adopted in the meeting of the Governing Body and Annual General meeting of the Development Unit, World Bank Aided Rubber Project, Tripura held on 15.11.2010, Basic pay of Rs.12670/- in the scale of pay Rs.9570-30000 with pay band PB-3 and grade pay Rs.3100/- as per Tripura Civil Services (Revised Pay) Rules, 2009 and following admissible allowances for the following Assistant Credit Officers, Development Unit, World Bank Aided Rubber Project, Tripura is hereby sanctioned w.e.f. 01.01.2011 as indicated below. Other terms and conditions will remain unchanged.

SL No.	Name of Incumbent and Designation	Payband scale	Grade pay (Rs.)	Basic pay (3 +4) Rs.	D.A. 24% (Rs.)	HRA 10% (Rs.)	CA (Rs.)	Total (5+6+7+8)
1	2	3	4	5	6	7	8	9
1.	Sri Arup De Asstt. Credit Officer	Rs.9570-30000 Pay band PB-3	3100	12670	3041	1267	325	17303

2.	Sri Rajib Achariya Asstt. Credit Officer	Rs.9570-30000Pay bandPB-3	3100	12670	3041	1267	325	17303
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The expenses towards pay and other allowances shall be borne by the Development Unit out of service charge and bank interest earned by the Development Unit and the pay shall be paid in cash to the Assistant Credit Officers.”

20. Therefore, it is apparent that THE fund that is created for purpose of payment of pay and other allowances shall be managed by the Development Unit from service charge and bank interest. The petitioner has challenged the impugned memorandum dated 05.09.2014 [Annexure-13 to the writ petition] after a considerable lapse of time. By the representation dated 16.06.2020 and the reminder dated 28.07.2020 [Annexure-17 to the writ petition], it has been urged for releasing the regular pay scale in their favour. But the respondents have denied the same by projecting the financial position. All the relevant records have been produced before this court and it appears that the respondents does not hold a good financial position and in terms of the project frame-work, the pay and allowance of the petitioner was supposed to come from the fund constituted of the service charge and interest from the bank. The amount that has been kept in the bank has been revealed by the respondents. In the consideration of this court, the said amount is very meager. As such, this court is not in a position to direct the respondents to release the regular pay scale to the petitioner for his holding the post of Assistant Credit Officer on contract basis directly. However, the respondents are directed to review the financial position in order to extend the regular scale having due regard to the scale that was earlier released to the petitioner in terms of the decision of the Annual General Meeting of the Development Unit [the Society] which was held on 15.11.2010. The Nodal Officer of the Government shall also explore the possibilities of placing additional fund for that purpose. The said exercise shall be completed within a period of 6(six) months from the date when a copy of this order shall be placed before the respondents.

In terms of the above, this writ petition stands disposed of.

There shall be no order as to costs.”

3. In earlier round of litigation, the learned Single Judge held that the post of Assistant Credit Officer is a tenure-based post. I am unable to take a different view. In my opinion, there cannot be any disagreement that the post of Assistant Credit Officer is a tenure-based post subject to fulfillment of certain conditions. However, in view of the directions passed by learned Single Judge of this Court in WP(C) No.674/2020 supra, the respondents had considered the matter and issued memorandum dated 23.08.2022 whereby and whereunder it was communicated to the petitioner that his representation for

granting regular pay scale could not be acceded to due to financial condition the respondents are facing presently.

4. Feeling aggrieved by the said memorandum dated 23.08.2022, the petitioner has approached this Court again urging that he should be paid regular pay scale as prescribed under the memorandum dated 23.12.2010.

5. Mr. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel has strongly argued that two posts of Assistant Credit Officer had been created by the Government of Tripura with regular pay scale. Sudden stoppage and non-granting of the said regular pay scale to the petitioner holding the post of Assistant Credit Officer is illegal, arbitrary and discriminatory and thus violative of Articles 14 and 16 of the Constitution of India. The crux of submission of learned senior counsel appearing on behalf of the petitioner is that once regular pay scale is granted, it cannot be withdrawn under any circumstance. It is further argued that the nature of post is permanent in nature and as such, the petitioner is entitled to regular pay scale.

6. On the other hand, Mr. Gautam, learned counsel appearing for the respondents submits that from the nature of creation of the posts, it is apparent that the said posts of Assistant Credit Officer are tenure-based. Further, when the financial position of the Project was found good the respondents created these two posts with pay scale subject to fulfillment of certain conditions. He has drawn the attention of this Court that initially the petitioner was engaged on contract basis for fixed pay of Rs.3,000/- per month and thereafter, with the extension of the period of the contract service, the remuneration has been increased. Sometimes, the Government had created post of Assistant Credit Officer providing certain pay scale in the Pay Band-3 along with other

allowances. Since the terms and conditions of granting pay scale could not be fulfilled by the petitioner and due to heavy loss suffered by the Development Unit, the Government was forced to stop sanctioning and granting of any pay scale. However, enhanced his salary to Rs.25,000/- per month. From the memorandum relating to creation of posts of Assistant Credit Officer, it is apparent that at every time Government had created the said post of Assistant Credit Officer prescribing certain pay scale for a period of only one year. So, the nature of creation of post of Assistant Credit Officer clearly suggests that it is tenure-based post having no permanent status and that was so on contract basis.

7. I have considered the submissions of learned counsel appearing for the parties and also have perused the observations and findings of learned Single Judge while disposing of the writ petition being numbered WP(C) 674/2020. As I said earlier, there cannot be any disagreement that the post of Assistant Credit Officer is purely a tenure-based post. Sometimes, considering the financial position, pay scales were prescribed. It is also revealed that the said post was created for one year and thereafter it was extended time to time and every after one year there was new creation of the said post of Assistant Credit Officer prescribing certain pay scale and that also subject to fulfillment of certain conditions. In my considered view, the nature of the creation of post coupled with occasional grant of pay scale on certain conditions keeping in view the financial position of the Project would not confer any statutory right upon the petitioner to claim such pay scale.

8. I have further taken note of the submissions of learned senior counsel appearing for the petitioner that the way the respondents had dealt

with the directions passed in the writ petition supra, it could not be proper and cannot be said to be a genuine consideration.

9. I have perused the memorandum dated 23.08.2022 [**Annexure-19** to the writ petition]. While considering the directions of learned Single Judge of this Court, the Project Advisor, Development Unit, WBARP, Tripura had observed thus:

“.....Sri De, Assistant Credit Officer on 27-06-2022 has submitted representation to the Principal Secretary, Tribal Welfare Department, Govt. of Tripura and others seeking restoration of regular scale of pay in view of the said Order of Hon’ble High Court, Tripura by setting aside the Memorandum dated 05-09-2014 with all consequential and ancillary benefits.

From fund status of Development Unit, World Bank Aided Rubber Project is a project based unit, Tripura which has to pay back Tripura State Co-op. Bank Ltd. Rs.2.19 Crore while recovery the same from the user, it reveals that it has no sufficient fund to provide regular scale of pay to him.

Further, as per recruitment order Sri De is not eligible for regular scale of pay as he was recruited on contract basis only for project duration.

*It is, therefore, ordered that the contractual engagement of Sri Arup De, Assistant Credit Officer is hereby issued with effect from the date of issue of this Memo. for further period of 11(eleven) months with **one day break** before re-engagement.*

This has got approval of the Principal Secretary, Tribal Welfare Department, Government of Tripura vide U.O. No.740, dated 25-07-2022.”

10. Having perused the above consideration, undertaken by the Project Advisor, Development Unit, WBARP, I find that the authority concerned while considering the judgment and order passed by this Court had taken into account the financial position of the Development Unit, WBARP and it is categorically stated that there is no fresh fund to provide regular scale of pay to him.

11. From the contents of the writ petition coupled with the supporting documents, it comes to fore that the respondents granted pay scale to the petitioner on some occasions subject to fulfillment of certain conditions.

Thereafter, the authorities concerned were found to be unable to provide the pay scale as fixed by the Government time to time. Subsequently, when it was found that it had no sufficient fund they put the service of the petitioner on fixed pay basis.

12. In view of this, I am unable to agree with the submissions of learned senior counsel appearing for the petitioner that the respondents had not properly dealt with the directions passed by learned Single Judge to explore the possibilities of granting regular pay scale to the petitioner.

13. There is yet another aspect necessary to be considered. Post of Assistant Credit Officer is not a permanent post. From the nature of creation of post time to time, it crystallizes that the post of Assistant Credit Officer is a tenure-based post having different pay structures prescribed time to time. Every after one year, the respondents used to create the said post prescribing certain pay scale or remuneration depending upon the financial position of the organization. Furthermore, the original engagement of the petitioner was on contract basis and the nature of engagement has not been changed. More so, it is a project based post.

14. In the considered view of this Court, the petitioner cannot claim regular pay scale on regular basis. Under memorandum dated 11th October, 1999 two posts of Assistant Credit Officers were created prescribing pay scale of Rs.6,500-12,300/- w.e.f. October, 1999 only for six years i.e. till the end of 2005. The petitioner was engaged on contract basis vide order dated 21.05.2008 on fixed remuneration of Rs.3000/- that is after expiry of the period of six years. So, it is clear that the pay scale prescribed under memorandum dated 11th October, 1999 would not be applicable to him. Vide memorandum dated 16.12.2009 [*Annexure-5* to the writ petition], the

remuneration was enhanced from Rs.8,000/- to Rs.10,810/- per month w.e.f. 01.01.2009 and it was applicable till November, 2009 i.e. for only 11 (eleven) months. Under memorandum dated 23.12.2010 certain pay scale of Rs.9,570 to 30,000/- with Pay Band-3 was provided to the petitioner. In the said memorandum, it is clearly stated that other terms and conditions would remain unchanged. The benefit of granting pay scale was withdrawn vide memorandum dated 05.09.2014 and the service of the petitioner was put on fixed pay basis for a sum of Rs.21,000/- per month w.e.f. 1st September, 2014 onwards. Under memorandum dated 18.11.2014 [**Annexure-13** to the writ petition] the post of Assistant Credit Officer was again created after obtaining due sanction of the State Govt. subject to fulfillment of certain conditions. One of the important conditions was that 50% of the outstanding loan including interest should be recovered w.e.f. 31st March, 2015. It was further stipulated in the said memorandum that further continuation of the two posts will depend upon fulfillment of conditions as indicated here-in-above.

15. Under memorandum dated 16.05.2015 [**Annexure-14** to the writ petition] two posts of Assistant Credit Officer were created afresh after obtaining approval of the Government subject to condition that 50% of the outstanding loan including interest should be recovered by 31st March, 2016. The other terms and conditions remained unchanged. The said post was again created under memorandum dated 20.01.2017 [**Annexure-15** to the writ petition] providing pay scale of Rs.10,230-34,800/- for the period from 01.04.2016 to 31.03.2017 subject to condition that 50% of the outstanding loan including interest should be recovered by 31st March, 2017. Thereafter, as I said earlier considering the financial position of the Development Unit of the Project, the pay scale prescribing against the post of Assistant Credit Officer

was withdrawn and the service of the petitioner was put on fixed pay basis which was enhanced upto Rs.25,000/- per month.

16. From the aforesaid discussions, it is aptly clear that the post of Assistant Credit Officer was never created on permanent/regular basis. After the end of the tenure of the post, it was found to be created afresh for a period of further 11 (eleven) months.

17. In view of this, the post of Assistant Credit Officer is purely a tenure-based post and having held the said post, the petitioner cannot claim for regularization of the said post. As I have already observed, no statutory or constitutional right is conferred upon the holder of such tenure-based post to claim a particular pay scale. Fixation of pay against a particular post is absolutely within the domain of the government. This Court in exercise of its discretionary and extra-ordinary jurisdiction under Article 226 of the Constitution of India cannot direct the policy makers to convert a tenure-based post to a permanent/regular post prescribing a regular pay scale.

18. In the light of above discussions and for the reasons recorded here-in-above, I do not find any merit in the present writ petition. Accordingly, it stands dismissed.

JUDGE