

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.158 of 2022

- 1. The State of Tripura,**
To be represented by Secretary to the Government of Tripura, Department of School Education, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, Dist. West Tripura.
- 2. The State of Tripura,**
Represented by the Principal Secretary to the Government of Tripura, Department of Finance, Govt. of Tripura, New Capital Complex, PO Kunjaban, Agartala, West Tripura.
- 3. The Director,**
Department of Secondary Education, Government of Tripura, Agartala, West Tripura.

..... Appellant(s)

V E R S U S

Sri Litan Shil,
Son of Late Gita Rani Shil and Late Gopal Chandra Shil, resident of School Tilla, Ward No.5, Panishagar Nagar Panchayat, PO Panishagar, North Tripura.

..... Respondent(s)

For Appellant(s)	:	Mr. K. De, Addl. G.A.
For Respondent(s)	:	Ms. R. Purkayastha, Advocate.

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

_O_R_D_E_R_

02/12/2024

Heard Mr. K. De, learned Addl. G.A. for the appellants and Ms. R. Purkayastha, learned counsel for respondent-writ petitioner.

Writ petitioner was appointed on fixed pay basis in Group-D post on 29.06.2020 with a remuneration of Rs.12,000/- per month on the death of his mother Lt. Gita Rani Shil, a regular Group-D employee in-harness. He approached the Writ Court with the following prayers:

- (i) ISSUE RULE, calling upon the respondents and each one of them to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, for quashing/setting aside only that impugned part/policy decision of the Memorandum vide No.F.20(3)-GA(P&T)/96 dated 15.12.2001

(**Annexure-B**) wherein most illegally it has been decided that appointments to Group-C and Group-D posts, which are not required to be filled up by selection through TPSC, may be made on fixed pay basis.

(ii) ISSUE RULE, calling upon the respondents and each one of them to show cause as to why a Writ of Certiorari and/or in the nature there-of, shall not be issued, for quashing/setting aside only that impugned part/ policy decision of the Die-n-Harness Scheme (**Annexure-C**) wherein most illegally it has been laid down that appointments under Die-in-Harness Scheme to Group-C and Group-D posts shall be made on fixed pay basis.

(iii) ISSUE RULE, calling upon the respondents and each one of them to show cause as to why a Writ of Certiorari and/or in the nature there-of, shall not be issued, for quashing/setting aside only that impugned part/ policy decision of the Memorandum vide No.F.20(3)-GA(P&T)/96 dated 06.04.2002 (**Annexure-D**), wherein most illegally it has been decided that fixed pay in case of appointments to Group-C and Group-D posts, will be 65% and 75%, respectively, of the minimum of the pay scale of the concerned post, declaring the same to be void since ultra vires of the mandate of the Constitution of India.

(iv) ISSUE RULE, calling upon the respondents and each one of them to show cause as to why a Writ of Certiorari and/or in the nature there-of, shall not be issued, for quashing/setting aside only that impugned part/ decision of the Memorandum vide No.F.1(1-1)-SE-E(NG)/2018(L-2) dated 29.06.2020 (**Annexure-A**) under which the appointment of the petitioner has been most illegally given temporarily with salary on a fixed pay of Rs.12000/- only per month (75% of the pay in LEVEL-1 of the Tripura State Pay Matrix, 2018).

(v) ISSUE RULE, calling upon the respondents and each one of them, to show cause as to why Writ of Mandamus and/or in the nature, shall not be issued, for mandating/directing the respondents, to appoint the petitioner, Sri Litan Shil, in the permanent post of Class- IV (Group-D) and to provide him regular pay scale of the concerned post as per the existing Pay Matrix of the Tripura State Civil Services (Revised Pay) (First Amendment) Rules 2018 with its corresponding pay revisions and/ or at the minimum of the regular pay scale of the existing Pay Matrix of the Tripura State Civil Services (Revised Pay) (First Amendment) Rules 2018 with its corresponding pay revisions at par the similarly situated colleagues with retrospective effect from the date of his appointment and therefore to provide him arrears of salary with available market rate of interest with effect from July, 2020 (i.e. his month of appointment).

(vi) CALL FOR THE RECORDS appertaining to this petition;

(vii) COSTS of and incidental to this proceeding;

(viii) Any other RELIEF(S) as to this Hon'ble High Court may deem fit and proper;

The policy decision of the State contained in Memorandum dated 06.04.2002 whereby it laid down that in case of appointment to Group-C and Group-D posts on compassionate grounds on fixed pay basis, the incumbent

would get only 65% and 75% of the minimum of the scale of pay of the concerned post for a period of five years. The learned Writ Court after hearing learned counsel for the parties and taking note of the decision in the case of *State of Punjab and others vs. Jagjit Singh and others [(2017) 1 SCC 148]* was pleased to quash the policy decision of the State contained in Memorandum dated 16.10.2007 and Memorandum dated 06.04.2002 and issued consequential directions for fixation of the pay of the petitioner on minimum of the pay scale of regularly engaged Government employees for the said post with arrears.

Being aggrieved, the State is in appeal.

The first issue which arises for consideration in the present case is on jurisdiction of the learned writ court to entertain the writ petition. As per the High Court Rules, the cases involving Government policy are amenable to the jurisdiction of the Division Bench of this Court under Chapter V, Rule 2 (XXXVIII). Rule 3 prescribes jurisdiction of Single Bench which are all matters not specified against Rule 2 above. The impugned Memorandums dated 16.10.2007 and 06.04.2002 definitely fall within the category of Government policy as they cover all those employees who are appointed on compassionate grounds in Group-C and Group-D posts under the State. As per the policy such compassionate appointees would be getting only 65% and 75% respectively as salary as against the minimum scale of pay available to the regularly appointed employees to those posts. In such an event, the impugned judgment rendered by the learned Writ Court suffers from lack of jurisdiction. It should have been placed before the Division Bench for adjudication. Consequently, the impugned judgment is set aside.

Learned counsel for the writ petitioner prays for liberty to file a fresh writ petition with all material facts and pleadings assailing the Government policy in question and for consequential reliefs so that the matter can be heard by the Division Bench. Liberty is granted. The writ appeal is allowed on this sole point. It is made clear that this Court has not made any comments on the merits of the challenge to the policy in the present appeal or the case of the parties.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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SUJAY GHOSH

Rudradeep

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