

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.898 of 2022

Sumit Biswas and 19 Ors.
Versus
The State of Tripura and 5 Ors.
....Petitioner(s)
....Respondent(s)

WP(C) No.899 of 2022

Md. Abdul Munim and 9 Ors.
Versus
The State of Tripura and 5 Ors.
....Petitioner(s)
....Respondent(s)

WP(C) No.900 of 2022

Imran Hossain Maishan and 21 Ors.
Versus
The State of Tripura and 5 Ors.
....Petitioner(s)
....Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. K. Nath, Advocate
For the Respondent(s)	:	Mr. Kohinoor N. Bhattacharyya, GA Mr. B. Majumder, Dy. SGI
Date of hearing & delivery of judgment & order	:	19.02.2024
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH
Judgment and Order (Oral)

Since common questions of law and facts are involved in all the writ petitions, these are taken up together for hearing and disposal with the consent of learned counsel appearing for the parties.

2. For convenience, WP(C) No.898 of 2022 is taken up as a lead case and the reliefs claimed in this writ petition may be reproduced here-in-below:

“i. Issue Rule upon the Respondents to show cause as to why Writ in the nature of mandamus and/or Order or direction shall not be issued whereby directing the Respondent to regularize the service of the Petitioners in the posts of Madrassa Teachers (General/Science/Arabic), under the centrally sponsored “Scheme for providing Quality Education in Madrassa.”(SPQEM)

ii. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to pay monthly salary at par with their equivalent in the State Govt. w.e.f. 01.01.2017 with arrears.

iii. Make the Rules absolute,

iv. Call for records,

v. Pass any further order/orders as this Hon'ble High Court considered fit and proper.”

3. Prior to filing of this writ petition by the present petitioners, I find similarly situated persons had previously filed other writ petitions claiming same reliefs. One of those writ petitions was registered as **WP(C) No.519 of 2015** titled as ***Md. Abdul Wahid vs. The State of Tripura and Ors.*** Those writ petitions were disposed of by a common judgment and order dated 05.01.2016 passed by a learned Single Judge of this Court wherein it was directed thus:

“Having regard to the circumstances as emerged from the submission of the learned counsel and being alive to the predicament of the petitioners, this Court is of the opinion that the State may take appropriate measure to extend some security to the petitioners’ services.

For that purpose, the state shall reconsider the recommendation made by the State Level Madrassa Advisory Committee afresh to weigh whether the petitioners and alike can be regularised or extended with a fair protection of their services. The secretary to the Government of Tripura in the School Education Department shall place the matter for consideration of the council of Ministers for their appropriate consideration, if required the Government of India may be roped in, in this exercise. The matter shall be placed by the Secretary to the

Government of Tripura, Education Department for consideration of the Council of Ministers along with a copy of this order within a period of 3(three) months from the date when the petitioner shall submit a copy of the judgment to the said Secretary.

With this observation and direction all these writ petitions are disposed of.”

4. In pursuance of the aforesaid judgment and order, the Director, Elementary Education, Tripura had made a communication dated 04.03.2016(Annexure-6 to the writ petition) to the Under Secretary, Government of India, Ministry of Human Resource Development, which reads as under:

*“No.F.13(49)-DEE/MADRA/2016
Government of Tripura
Directorate of Elementary Education
(Madrassa Education Cell).*

Dated, Agartala, the 04/03/2016

*To
Smt. Sharda Sharma
Under Secretary,
Government of India,
Ministry of Human Resource Development,
Department of School Education & Literacy,
Room No.124, C-Wing,
Shastri Bhawan, Gate No-6,
New Delhi-110 115.*

Reference:- Judgment of the Hon'ble High Court of Tripura passed on 05-01-2016, 11-01-2016 & 13-01-2016.

Subject:- Regularization or extend with a fair protection of services of SPQEM Under Graduate Teachers.

Madam,

At present 54 Under Graduate Teachers are working under SPQEM for whom salary @ Rs.5,000/- per month is being paid from the State fund as Government of India has stopped sanctioning of their salary since 2013. Out of them 42 UGTs have filed Writ Petition before the Hon'ble High Court of Tripura for regularizing their services. Hon'ble High Court of Tripura has disposed of the Writ Petitions with a direction to reconsider regularization or extend with a fair protection of their services and if required Government of India to rope in (copy enclosed) and to place the matter before the Council of Ministers for consideration.

It is to be mentioned that the State Level Madrasa Advisory Committee in its meeting held on 31-12-2009 advised the School Education Department to initiate a proposal for regularization of services of the then 127 Modernization Madrasa Teachers (renamed as SPQEM during 2008-09). But State Govt. could not implement the decision due to fund constraint.

In view of the above, you are requested kindly to take the matter as an important issue and provide your valuable views to take further necessary action.

Matter may be treated as court urgent.

Yours faithfully

(U.K. Chakma)

Director

Elementary Education

Tripura

PH & FAX NO-0381 230 7828,

E-mail:-madrasaeducell.tripurastate@gmail.com”

5. From the above correspondence, it comes to fore that the Director, Elementary Education, Tripura, one of the respondents of the present writ petition made a request to the Government of India to initiate a proposal for regularization of services of the then 127 Modernization Madrasa Teachers(renamed as SPQEM during 2008-09). It was clarified in the said communication that the State Government was unable to implement the decision due to fund constraint. However, under Memorandum dated 07.10.2016(Annexure-7 to the writ petition) the State respondents had revised monthly salary of teachers under SPQEM, which is reproduced hereunder in tabular form:

Category of Teacher	Revised Monthly salary of Teachers under SPQEM(in Rs.)	
	Before completion of 5 years	After completion of 5 years
PGT	12,476	26,580
GT	10,316	21,022
UGT	8,606	16,621

Thereafter, a Memo. dated 13.10.2017 had been issued by the Addl. Secretary & Director, Elementary Education, Tripura informing the

concerned authorities about the re-allocation of fund not exceeding to Rs.1,48,19,180/-(Rupees one crore forty eight lakhs nineteen thousand one hundred eighty) only and the same was accorded to the concerned Inspector of Schools, H.O. & D.D.Os of the Madrasas during Financial Year 2017-18 for payment of 2(two) months salaries to SPQEM Madrasa for the period from October, 2017 to November, 2017. However, the said Memo dated 13.10.2017 had been cancelled and the same Department had issued another Memo dated 26.10.2017(*Annexure-9* to the writ petition) reducing the re-allocation of fund to the extent of Rs.1,00,08,350/-(Rupees one crore eight thousand three hundred fifty).

6. In the aforesaid background of facts, I have heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath and Mr. K. Chakraborty, learned counsel appearing for the petitioners. Also heard Mr. Kohinoor N. Bhattacharyya, learned GA appearing for the respondents-State and Mr. B. Majumder, learned Dy. SGI appearing for the respondent-Union of India.

7. Mr. Roy Barman, learned senior counsel for the petitioners at the outset has referred to the scheme namely “Scheme of Financial Assistance for Modernisation of Madrasa Education, 1994”(here-in-after referred to as “Scheme, 1994”)[*Annexure-1* to the writ petition].

Learned senior counsel for the petitioners would contend that the said Scheme, 1994 is perennial in nature and since the petitioners were engaged through proper selection process and had been rendering service for quite a reasonable period of time, their services are necessary to be regularized and the petitioners are entitled to get regular pay scale as those of

the teachers employed under the Government of Tripura, if not, at least, the minimum pay of the basic pay paid to the regular teachers under the State Government. Giving much emphasis to the Scheme, learned senior counsel for the petitioners has submitted that the scheme itself postulates that the teachers appointed under the Madrasas would be treated at par the teachers of the State Government. Referring to Clause 3 of the scheme, Mr. Roy Barman, learned senior counsel contends that *“The salary for teachers appointed under this scheme will be the same as given to similar teachers appointed by the respective State Governments.”* Learned senior counsel for the petitioners has further contended that the objective of the scheme is to encourage traditional institutions like Madrasas and Maktabas by giving financial assistance to introduce Science, Mathematics, Social Studies, Hindi and English in their curriculum.

Proceeding further, learned senior counsel for the petitioners has submitted that the respondents must comply the judgment and order dated 05.01.2016 passed by this Court in the case of *Abdul Wahid(supra)* and other connected writ petitions.

8. On the other hand, Mr. Majumder, learned Dy. SGI for the respondent-Union of India has submitted that the petitioners are not at all entitled to claim regularization since they are appointed under a specified scheme formulated by the Central Government. Since it is a scheme, according to learned Dy. SGI, it cannot be perennial in nature and at any point of time the scheme may be discontinued. The petitioners are not holding any permanent post created by the Central Government.

Furthermore, the scheme is voluntary in nature and applicable to Non-Government Organizations.

9. Opposing the submissions of learned senior counsel for the petitioners Mr. Bhattacharyya, learned GA adopting the submissions of learned Dy. SGI has contended that it is settled proposition of law that regularization cannot be claimed as a matter of right. The service conditions of the petitioners are governed by the provisions made in the scheme itself. Their salary structure is also determined by the Government of India and the State Government cannot in any way be directed to revisit the pay scale of the petitioners or to regularize their services under the State Government. To fortify this submission, learned GA has placed reliance upon the decision of the Hon'ble Supreme Court in *State of Rajasthan and Ors. vs. Daya Lal and Ors, (2011) 2 SCC 429*. Concluding his argument, Mr. Bhattacharyya, learned GA has urged this Court to dismiss the instant writ petitions filed by the petitioners.

10. I have considered the rival submissions advanced by the learned counsel appearing for the parties and have perused the scheme as well as other documents annexed to the writ petition and the counter affidavits.

11. On perusal of the scheme, I find that the scheme is purely voluntary to be fully funded by the Central Government. The scheme is basically formulated to develop the educationally backward minorities pursuing their education in traditional institutions like Madrasas and Maktabas with the inclusion of subjects like Science, Mathematics, Social studies etc. in their curriculum. Clause 3(I) of the Scheme clearly speaks of financial assistance where 100% grants to be provided by the Central

Government to ensure the appointment of qualified teachers in Science, Mathematics, Social studies and languages engaged in such traditional/voluntary organizations/Government aided institutions for modernization of Madrasa Education.

12. Further, under Clause 3 of the Scheme, 1994 it is clearly stated that *“In the present scheme, it is proposed to give 100% Central Assistance for salary in addition to other items of the scheme, in order to encourage the voluntary organizations to modernize their curriculum.”* Clause 5 of the Scheme, 1994 prescribes Eligibility Conditions, which is as under:

“5. ELIGIBILITY CONDITIONS:

1. *Voluntary organizations/societies/trusts which are registered under central or state Govt. Acts or Wakf Boards shall be eligible to apply for assistance under the scheme.*
2. *Only those voluntary agencies which have been in existence for three years would be considered for assistance under this scheme.*
3. *Such voluntary organizations should:*
 - *have a proper constitution of Articles of Association;*
 - *have a properly constituted managing body with its power and duties clearly defined in the constitution;*
 - *be in a position to secure the involvement, on voluntary basis, of knowledgeable persons for furtherance of their programmes;*
 - *not be run for the profit of any individual or a body of individuals;*
 - *not discriminate against any person or group of persons on the ground of language or sex, etc.*
 - *not function for the furtherance of the interests of any political party;*
 - *not in any manner incite communal disharmony.”*

Again, Clause 6 of the Scheme, 1994 prescribes the implementation and monitoring, which is as under:

“6. IMPLEMENTATION AND MONITORING:

The scheme will be implemented by the State Governments as a Central Scheme under which 100% financial assistance will be provided to

state Governments for implementation of this scheme. All requests for financial assistance shall, as a rule, be entertained by the State Governments on the prescribed application forms. These will be considered on merits by the State level grant-in-aid committees.

Monitoring report regarding the number of Madrasas receiving assistance, total number of beneficiary students and the amount received and utilized by the madrasas, shall be furnished to the Department of Education, Govt. of India on annual basis. The performance of the scheme may be reviewed after completion of three years of its operation.

Organisations requesting for financial assistance will apply on the prescribed APPLICATION FORM.(ANNEXURE-I).

- The application will be addressed to the Education Secretary in the State/UT, who will be the Chairperson of Grant-in-Aid committee in the State/UT.
- Education Secretary can also nominate any officer to act as Chairperson in his place if he/she so desires.

Other members of the committee will include:

- One representative from the Department of Education, Government of India.
- One/two representatives from Madrasa Education Management/Board.
- One eminent educationist.
- TA/DA to attend these meetings will be borne by the concerned Deptt./Institutions/Organisations nominating their representative to attend the Grant-in-Aid Committee meetings.

The grant will be admissible to only those organizations/institutions who will submit the updated statement of accounts for all the grant-in-aids received by them from central/State governments for the preceding one year duly certified.

The accounts/records of activities of the organization shall be available on demand for inspection to Central/State Government.”

13. I have perused the Scheme, 1994, which has enough relevance to resolve the disputes raised in this writ petition.

14. It is stated in the writ petition that the said Scheme, 1994 had been restructured during the period 2014-15 which covers two special sub-schemes namely, “Scheme for Providing Quality Education in

Madrasa(SPQEM)” and “Infrastructure Development of Minority Institutions(IDMI)”. It is further stated that Scheme for Education of Madrasas and Minorities(for short, SPEMM) comprising of SPQEM and IDMI will be a Centrally Sponsored scheme, rather than be continued as 100% grant scheme and the funding pattern under SPEMM(comprising of SPQEM and IDMI) would be similar to other centrally sponsored schemes i.e., 90:10 for NE States, Himachal Pradesh, Jammu & Kashmir and Uttarakhand. So, under the revised scheme the funding pattern has been re-determined as 90:10.

15. Next, on plain reading of the offer of appointments issued in favour of the petitioners it transpires that the petitioners were offered a purely temporary post of General Teacher under the Centrally sponsored Plan Scheme, namely, “Scheme for Providing Quality Education in Madrasa”(SPQEM) implemented by the Education(School) Deptt., Tripura on fixed honorarium basis Rs.6,000/-(Rupees Six thousand) only per month as per schematic pattern of SPQEM Scheme. The terms and conditions of appointment are as under:

- “i) The appointment is purely on temporary basis and till continuation of this scheme by the Government of India.*
- ii) Rates of monthly honorarium may be changed as per norms of Government of India.*
- iii) The appointed teacher shall have to undergo short course training as and when organized by the Director of School Education.*
- iv) Taking of an Oath of Allegiance to the Constitution of India in the prescribed form.*
- v) Their fixed honorarium shall be drawn by the Office of the concerned Inspector of Schools from their respective date of joining.”*

16. It is pertinent to mention herein that the restructured scheme further provides funding pattern where it is stipulated that Rs.6,000/- per

month for Graduate Teacher and up to Rs.12,000/- per month for Graduate with B.Ed./Post Graduate/Post Graduate with B.Ed. would be made for maximum of 3(three) teachers per Madrasa and up to Rs.5,00,000/- per year per Madrasa Board.

17. In the light of the aforesaid facts narrated here-in-above, I am of the firm opinion that the petitioners are not entitled to get their services regularized under the State respondents. It is revealed that the Scheme is made for developing the standard of education in the traditional institutions like Madrasas and Maktabas by way of introducing Science, Mathematics, Social studies, etc.

The funding pattern is 90:10 ratio, i.e. to fulfill the object of the Scheme, 90% of the total expenditure would be borne by the Central Government and 10% by State Government. Hence, the State Government has minimum liability to allocate fund for the teachers appointed under the said Scheme, 1994 read with the restructured schemes.

The Central Government has not created any sanctioned post against which such teachers can be permanently appointed or absorbed. In the appointment letter, it is clearly written that the appointment is purely on temporary basis and till continuation of the Scheme, 1994 formulated by the Government of India.

From the Memorandum of offer of appointment as extracted in the preceding paragraph[para 15], it is evident that rates of monthly honorarium also to be fixed by the Government of India and it may be changed as per norms of the Government of India.

18. That apart, this Court in exercise of its extraordinary and discretionary power under Article 226 of the Constitution of India cannot direct the State to regularize or permanently absorb an employee in absence of any sanctioned vacant posts considering the financial involvement necessary for creation of such posts. This Court has no expertise to evaluate the economic scenario of the State. The financial position is to be considered by the State Government itself and in this respect, the Court should not step into the shoes of the Government. The Court also has no power to unilaterally direct the Government to pay the minimum pay of the basic pay to the teachers appointed under the State Government since the nature of appointment *vis-à-vis* the status and position of the petitioners cannot in any way be treated as equal to that of the teachers appointed under the State Government.

19. Furthermore, it is settled proposition of law that claim of regularization cannot be made as a matter of right. The equality clause contained in Articles 14 and 16 of the Constitution of India should be scrupulously followed and the Court should not issue a direction for regularization of services of an employee which would be violative of the Constitutional Scheme(*Daya Lal(supra)*). It is also settled that the salary pattern in respect of an employee shall be governed by the terms mentioned in the appointment letter. The concerned employee has preferred to join the service knowingly well that on being appointed, he would be paid the salary which is mentioned in the terms of offer of appointment itself. In the case of *Daya Lal(supra)*, the Hon'ble Supreme Court has clearly held that the right to claim a particular salary against the State must arise under a

contract or under a statute. In the instant case, undisputedly the petitioners are paid the salary which is mentioned in their terms of appointment *vis-à-vis* the Schemes.

20. That keeping in mind, the submission of learned senior counsel for the petitioners that the petitioners are entitled to equal pay for equal work, according to me, the petitioners cannot be treated at par the regular teachers appointed under the State Government. Here, without amplifying the matter, it is clear that the status and position of the petitioners is clearly distinguishable as they were not appointed against any regular sanctioned posts alike the teachers appointed under the State Government in accordance with a specified Recruitment Rule framed under Article 309 of the Constitution of India; in contra-distinction the appointments of the petitioners directly and manifestly emanated from a Scheme formulated by the Central Government in a particular situation to achieve a different object, that is, to standardize education in Madrasas, and similar other organizations working in this field as stated in the preceding paragraphs.

21. The above dissimilarities disentitle the petitioners to be treated at par the teachers appointed under the State Government. The service conditions of the petitioners are exclusively governed by the provisions envisaged in the said Scheme *vis-à-vis* the memorandum of appointment encapsulating the terms and conditions mentioned therein.

22. For the reasons stated and discussed here-in-above, I do not find any merit in the present writ petitions and accordingly, the above bunch of writ petitions stands dismissed.

JUDGE

Snigdha