

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.03 OF 2022

1. The State of Tripura,

Represented by the Principal Secretary, GA (P&T) Department,
Government of Tripura, having his office at New Secretariat
complex,
Gorkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex,
Sub-Division- Sadar, District-West Tripura.

2. The Director General of Police, Tripura

having his office at Akhaura Raod,
PS- West Agartala, Sub-Division-Sadar,
District- West Tripura.

3. The Secretary, Finance Department,

Government of Tripura, having his office at Akhaura Road,
Agartala,
PS- West Agartala, Sub-Division- Sadar,
District- West Tripura.

Appellant(s).

(Respondents No.1 to 3 in writ petition)

Versus

1. Sri Haripada Das,

Assistant Inspector General of Police (Welfare),
Police Head Quarters,
Fire Brigade Chowmohani, A.K. Road,
PO and Sub-Division-Agartala,
PS-West Agartala, District-West Tripura, aged about 59 years.

2. Sri Pinaki Samanta,

Superintendent of Police, Government Railway Police, Police
Hospital Complex, A.D. Nagar,
PO- A.D. Nagar, Agartala, District- West Tripura, aged about 46
years.

3. Sri Amarjit Debbarma,

Commandant, 1st and 11th Bn.Tripura State Rifles, Gakulnagar,
PO- Gakulnagar, Sub-Division- Bishalgarh, District-Sepahijala,
aged about 45 years.

4. Sri Manik Das,

Superintendent of Police, West Tripura District, Fire Brigade
Chowmohani, A.K. Road, PO and Sub-Division- Agartala,
PS- West Tripura, District- West Tripura, aged about 50 years.

5. Sri Bijoy Debbarma,

Superintendent of Police, Security, West District Police Lines,
PO- A.D. Nagar AD, Sub-Division- Agartala,
District- West Tripura, aged about 50 years.

6. Sri Dilip Ray,

Principal of KTDS Police Training Academy, Narsingharh,
PO- Bimangarh, PS- Airport, District- West Tripura and Assistant
Inspector General of Police to the Hon'ble Chief Minister, Tripura,
New Secretariat Complex, Gorkhabasti, Agartala, PO- Kunjaban,
PS- New Capital Complex, Sub-Division- Agartala,
District- West Tripura, aged about 54 years.

7. Sri Nagendra Debbarma,

Superintendent of Police, Procurement,
West Tripura Police Lines, PO- A.D. Nagar, Sub-Division- Agartala,
District- West Tripura, aged about 58 years.

8. Sri Timir Das,

Commandant 2nd Bn. Tripura State Rifles, R.K. Nagar,
PS- Budhjungnagar, PO- R.K. Nagar,
District- West Tripura, aged about 47 years.

9. Sri Ananta Das,

Assistant Inspector General of Police (Training),
Police Head Quarters, Fire Brigade Chowmohani, A.K. Road,
PO and Sub-Division- Agartala, PS- West Agartala,
District- West Tripura, aged about 55 years.

10. Sri Apan Jamatia,

Assistant Inspector General of Police (Housing and Construction),
Police Head Quarters, Fire Brigade Chowmuhani, A.K. Road,
PO and Sub-Division- Agartala, PS- West Agartala,
District- West Tripura, aged about 50 years.

11. Sri Lalhruaia Darlong,

Commandant, 13th BN Tripura State Rifles Subhash Nagar,
PS- Kanchanpur, PO- Kanchanpur,
District- North Tripura, aged about 55 years.

12. Sri Biplob Deb,

Commandant A. Ch. Rama Rao Training Centre, R.K. Nagar,
PO-R.K. Nagar, District-West Tripura, aged about 54 years.

13. Sri Nabadwip Debbarma,

Commandant, CIAT School, Kachucherra, PS-Kachucherra,
PO- Kachucherra, District- Dhalai, aged about 44 years.

14. Sri Rothlunga Darlong,

Commandant, 10th BN Tripura State Rifles,
Barjala, Narikel Bagan, PS- Jirania, PO- NIT Complex,
District- West Tripura, aged about 46 years.

15. Sri Kishore Debbarma,

Superintendent of Police, Dhalai District, Ambassa,
PO and Sub-Division-Ambassa, PS-Ambassa,
District- Dhalai, aged about 41 years.

.....Respondent(s).

(Petitioner in writ petition No. 419 of 2021)

For Appellant(s)	:	Mr. S.S. Dey, Advocate General. Mr. S. Saha, Advocate.
For Respondent(s)	:	Mr. Somik Deb, Sr. Advocate. Mr. P. Chakraborty, Advocate.
Date of hearing	:	18.03.2024
Date of delivery of Judgment & Order	:	08.04.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

[Biswajit Palit, J]

Heard Learned Advocate General, Mr. S.S. Dey assisted by Mr. S. Saha, Learned Counsel for the State-Appellants also heard Mr. Somik Deb, Learned Senior Counsel assisted by Learned Counsel, Mr. P. Chakraborty for the respondents. The State of Tripura and two others as appellants have preferred this appeal challenging the judgment and order dated 14.09.2021 passed in WP(C) No.419 of 2021.

02. The appellants by this appeal have prayed for the following reliefs:

- A) Admit appeal & call for records.**
- B) Pass order setting aside the Judgment & order dated 14.09.2021 passed in W.P.(C).No.419 of 2021.**
- C) Pass order staying the operation of the Judgment & order dated 14.09.2021 passed in W.P.(C). No.419 of 2021.**

D) Pass any other order or Orders as deem fit & proper having regard to the facts & circumstances of the case.

And

For this act of kindness, the appellants shall as in duty bound ever pray.

03. Prior to that the respondent-petitioners preferred one writ petition before the Single Bench of High Court seeking the following reliefs:

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 transmitting the records, lying with them, for rendering substantive and conscionable justice to the petitioners;

ii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, to forthwith implement the decision of the State Government to identify at least 7% of the posts of TPS or more for creating/upgrading them as *Senior Selection Grade* posts in TPS in the line of TCS as reflected in the letter of *GA (P&T) Department bearing No.F10 (5) GA-(P&T)/04, dated 30th March, 2007* and/or to formulate appropriate scheme for minimum two avenues of promotion in TPS and also upgrade their pay band from 15,600-39,100 to 37,400-67,000/- with corresponding Level of Pay from 18 to 20 or more in Pay Band-5 of Tripura State Pay Matrix, 2018; and thereafter, *allow consequential benefits of promotion with corresponding pay on notional basis with effect from the date of eligibility of the petitioners in TPS SSG or next higher rank as per the Scheme of Promotion to be formulated;*

iii) Call for the records appertaining to this writ petition;

iv) After hearing the parties, be pleased to make the Rule Absolute in terms of i., ii. Above;

v) Costs of, and incidental to this proceeding;

vi) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;

For the gracious act of kindness the humble petitioner above named

SHALL AS IN DUTY BOUND EVER PRAY.

04. The present appellants contested the said writ petition and submitted counter-affidavit and after prolong hearing Learned Single Judge by judgment and order dated 14.09.2021 allowed

the writ petition of the respondent-petitioners and gave the following direction/observation:

"Having viewed thus and for the reasons stated above, this court directs the respondents to complete the process of implementation of the policy decision of the government creating the grade, namely, 'TPS Senior Selection Grade' keeping in view the observations made by this court here-in-above, particularly, paras 17, 18 and 19, within a period of 3(three) months from the date when the respondents shall receive a copy of this order either by the petitioners or from the learned Additional GA.

With the aforesaid observations and directions, the instant writ petition stands allowed and disposed.

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

Challenging the judgment of the Learned Single Judge of the High Court of Tripura the appellants have preferred this appeal.

05. In course of hearing of argument, Learned Advocate General assisted by Mr. S. Saha, Learned Counsel for the appellants submitted that the judgment and order of the Learned Single Judge was erroneous on the ground that no such direction can be given against the State to form a policy decision for amendment of rule, for creating new grade, namely TPS Senior Selection Grade because the same is violative of the Constitutional provisions as envisaged under Article 13(4) of the Constitution of India. Learned Advocate General submitted that the State Government in the cabinet has decided not to extend the benefit of SSG to the TPS Officers and since it is the policy decision of the State Government and the High Court has got no jurisdiction to interfere or to direct the State Executive to frame such a policy for creation of grade namely TPS SSG (Tripura Police Service, Senior

Selection Grade). Learned Advocate General further submitted that it is the absolute domain of the State Executive to take appropriate decision in this regard. In course of hearing, Learned Advocate General submitted that as per direction of the Learned Single Judge, a meeting was held under the chair of Chief Secretary, Government of Tripura on 30.10.2021 and further submitted that the said copy of the minutes of the meeting is already been submitted before the Court by the appellant and as per decision taken in the meeting, there is no scope to create any SSG as a promotional post in TPS in the light of TCS (Tripura Civil Service) cadre. So, nothing remains with the State Executive to initiate any further process on the said issue.

Learned Advocate General, in course of hearing further submitted that since the Executive Authority of the State has taken decision not to amend the rule for creation of the post of SSG for TPS Officers, so, the Court cannot direct to the State Government to make such a policy decision. So, Learned Advocate General finally submitted that the decision and direction of the Learned Single Bench in Para No.22 of the judgment needs to be struck off by allowing this appeal and also by setting aside the judgment of the Learned Single Judge. Learned Advocate General finally asked for allowing the appeal of the State appellant and to set aside the judgment rendered by Learned Single Bench of the High Court.

06. On the other hand, Learned Senior Counsel Mr. S. Deb, assisted by Learned Counsel, Mr. P. Chakraborty submitted that

the present respondent-petitioners filed the writ petition on the ground that the respondent-petitioners after successfully completing a combined competitive examination for direct recruitment to the post of TCS Grade-II and TPS Grade-II conducted by TPSC had joined to the post of DSP and Grade-II Cadre of TPS and TCS and when the respondent-petitioners appeared in the competitive examination and joined in the service, both TPS and TCS were comprised of only with two grades namely Grade-II and Grade-I in the promotional post. While the petitioners were continuing as Grade-II TPS Officers, the Government of Tripura in the year 2005 amended Tripura Civil Service Rules, 1967 vide 25th Amendment and created another higher grade of TCS Cadre namely Senior Selection Grade. Thus, from the year 2005 onwards, the TCS Cadres of the State are comprised of three grades, namely Grade-II, Grade-I Selection Grade and Senior Selection Grade with enhanced pay structure as prescribed for three grades. Following the decision of the Government for creation of two promotional avenues of TCS Officer to bring parity and to avoid discrimination, the respondent-petitioners also approached the Government to consider this matter.

Learned Senior Counsel, Mr. Somik Deb also submitted that Learned Single Judge, after considering all the factual and legal aspects and also after hearing the submission made by Learned Additional GA came to a logical conclusion and directed the State to complete the process of policy decision of the

Government, regarding creation of "TPS Senior Selection Grade", within a period of three months. Learned Senior Counsel further drawn the attention of the Court referring the communication dated 30.03.2007 written by Under Secretary, Government of Tripura of the G.A. (P&T) Department to the DGP Tripura regarding amendment of Tripura Police Service Rules.

07. For the sake of convenience, the relevant communication dated 30.03.2007 is narrated herein below:

NO.F.10(5)-GA(P&T)/04
GOVERNMENT OF TRIPURA
GENERAL ADMINISTRATION ON (PERSONNEL & TRAINING) DEPARTMENT

Dated, Agartala, the 30th March, 2007

To
The Director General of Police,
Tripura, Agartala.

Subject: Amendment of Tripura Police Service Rules, 1967.

Sir,

I am directed to inform you that it has been decided by the Government to create a new grade, namely "Senior Selection Grade" in the Tripura Police Service, almost in line with that of the T.C.S. The duty posts in the Senior Selection Grade of Tripura Police Service will be 7% of the total Cadre strength.

I would, therefore, request you to kindly initiate a proposal indicating the 7% duty posts in the Senior Selection Grade proposed to be created in Tripura Police Service.

An immediate response is earnestly requested.

Yours faithfully

(A. Debnath)

Under Secretary to the
Government of Tripura.

08. Learned Senior Counsel further submitted that after the said communication of the GA (P&T) Department, further

communication was made to the Director General of Police on 27.09.2008. For convenience, the exact verbatim of the said communication is given below:

NO.F.10(5)-GA(P&T)/04
GOVERNMENT OF TRIPURA
GENERAL ADMINISTRATION ON (PERSONNEL & TRAINING) DEPARTMENT

Dated, Agartala, the 27th September, 2008

To

The Director General of Police,
Tripura, Agartala.

Subject: Amendment of Tripura Police Service Rules, 1967.

Sir,

I am directed to this Department's letter of even number dated 30th March, 2007 (copy enclosed for ready reference) on the subject cited above and to state it has been decided by the Government to create a new grade, namely "Senior Selection Grade" in the Tripura Police Service, almost in line with that of the Tripura Civil Service. The duty posts in the Senior Selection Grade of Tripura Police Service will be 7% of the total Cadre strength.

I would, therefore, request you to kindly initiate a proposal indicating the 7% duty posts in the Senior Selection Grade proposed to be created in Tripura Police Service.

An immediate response is earnestly requested.

Yours faithfully

Enclo: As stated

(M.L. Das)
Under Secretary to the
Government of Tripura.

09. Learned senior Counsel further submitted that responding the aforesaid communication dated 27.09.2008 the Authorized Officer on behalf of the DGP had made a communication dated 23.10.2008 to the Under Secretary, GA (P&T) Department, Government of Tripura proposing to create 18 nos. of posts towards implementation of the policy decision of the

Government, considering 7% of the total cadre strength of 262 nos. of TCS Officers. For convenience, the said communication is also mentioned below:

No.41461/TPS Rules/PHQ.2005
GOVERNMENT OF TRIPURA
OFFICE OF THE DIRECTOR GENERAL OF POLICE
TRIPURA:AGARTALA

Dated, Agartala, the 23th Oct' 2008

To,
The Under Secretary,
GA(P&T) Department,
Govt. of Tripura,
A G A R T A L A
Subject: Amendment of Tripura Police Service Rules, 1967.

Sir,
Kindly refer to your letter No. F. 10(5)-GA(P&T)/04, dated 27th September, 2008 on the above noted subject.

On perusal of our record, it is seen that no such correspondence is received at this office. However, there was a proposal from PHQ for creating of Super Selection Grade posts in Tripura Police Service, (10% of the total Cadre strength) vide this office No F.P & A/Genl-I/PHQ/05 346-47 dated 3rd January, 2008. (copy enclosed for ready reference).

The present Cadre strength of Tripura Police Service Officers 262 and 7% of this comes to a total, 18 posts for Senior Selection Grade. This is matching with the total Non-IPS Cadre SP/CO, Level posts available in Police/TSR presently. (Annexure-"A").

In view of this the decision of the State Govt. towards creation of Senior Selection grade in Tripura Police Service against these posts may implemented, similar to Super Selection grade in Tripura Civil Service with parallel Pay Scale.

Yours faithfully

Enclo: As stated

(Arindam Nath)
Asstt. Insp. Genl of Police (HQr)
For Director General of Police Tripura

VACANCY POSITION OF SP/COMDT. LEVEL OFFICERS OF TRIPURA POLICE AS ON OCTOBER, 2008.

Sl. No.	POSTs	SANCTIONED		POSTED	VACANCY
		CADRE	EX-CADRE		
1.	AIG (Pers)	1	-	-	1

2.	SP (Security)	-	1	1	-
3.	SP (Traffic)	-	1	1	-
4.	CO.CTI	1	-	1	-
5.	CO.BW HG Bn	1	-	-	1
6.	CO.SAF	1	-	-	1
7.	CO. 1 st TSR	1	-	1	-
8.	CO. 2 nd TSR	1	-	1	-
9.	CO. 3 rd TSR	1	-	1	-
10.	CO. 4 th TSR	1	-	1	-
11.	CO. 5 th TSR	1	-	1	-
12.	CO. 6 th TSR	1	-	1	-
13.	CO. 7 th TSR	1	-	1	-
14.	CO. 8 th TSR	1	-	1	-
15.	CO. 9 th TSR	1	-	-	1
16.	CO. 10 th TSR	1	-	1	-
17.	CO. 11 th TSR	1	-	-	1
18.	CO. 12 th TSR	1	-	-	1

10. Learned Senior Counsel, thereafter, further submitted that after a long exercise, considering the organizational requirement, the respondent No.2 has proposed to abolish few posts in Grade-I of Tripura Police Service and also proposed for restructuring the posts to meet up the requirement of the Department, which were earmarked in communication dated 20.05.2019 made by the respondent No.2 to the respondent No.1 of the Original Writ Petition. It is further submitted that Para 5.1 of the said communication dated 20.05.2019, it appears that thirty (30) new posts of TPS, SSG were proposed to be created. Furthermore, it was revealed that the duty posts in the SSG, Tripura Police Service would be 7% of the total Cadre strength, according to the policy decision of the Government, which will be within the proposed thirty (30) posts. The parameters for considering eligibility for promotion to the post of TPS, SSG were

drawn at Paragraph 7 of the communication dated 20.05.2019 wherein it was proposed that the TCS and TPS Officers would complete five years of service in TPS Grade-I would be considered for promotion to TPS SSG.

11. Learned Senior Counsel, further submitted that a meeting of the Empowered Committee of the State under the Chairmanship of the then Chief Secretary of Tripura was held on 04.06.2020, wherein the issues were taken up for discussion on various points including proposal for amendment for Tripura Police Service Rules and also the review of pay structure of Tripura Grade-I Officers and it was decided that:

"Decision:- (i) It is decided in the meeting that TPS Senior Selection Grade may be created observing all rules and regulations and accordingly necessary posts for this grade will be identified.

(ii) Since, there is bar in promotion of government employees due to pending SLP at Hon'ble Supreme Court regarding reservation policy, no promotion to the next higher post can be considered now. However, government employees may be considered for giving full duty charge to the higher category posts indicated by pay level in the respective service.

(iii) xxx".

12. Learned Senior Counsel referring the same submitted that the high power committee of the State Government on principle decided to create TPS SSG but no effective step was taken. Even in the Writ Petition the contesting State-respondents by filing their affidavit in para No.9 mentioned that:

"9. That, in regard to the statements made in paragraph 7 of the writ petition it is stated that

the state Government in the GA (P&T) Department has taken a step for this purpose. However, it is a policy decision matter and as such the matter is under process.”

13. Learned Senior Counsel further drawn the attention of the Court that the Learned Single Judge on the basis of undertaking of the Learned Additional G.A. disposed of the Writ Petition with a direction to the State Authority to complete the process of creation of grade for TPS SSG within a period of three months. Thereafter, as per direction of the Learned Single Judge, a meeting was held under the chair of Chief Secretary, Tripura which is also annexed to the file by the State-appellants with a copy of affidavit and referring the same, Learned Senior Counsel submitted that the decisions taken in the minutes of the meeting are contradictory to each other. He also pointed out that Learned Advocate General at the time of hearing referred Para No.3 of the said minutes of the meeting but he did not submit anything regarding the last part of Para Nos.5, 6 and 7 of the said minutes of the meeting wherein the burden was shifted to the shoulder of DGP, Tripura.

14. For the sake of convenience, I would like to refer herein below the entire copy of the minutes of meeting:

**MINUTES OF THE MEETING HELD ON 30TH OCTOBER, 2021 AT 11.00 AM
I/C WITH CREATION OF ONE GRADE IN TRIPURA POLICE SERVICE
NAMELY, SENIOR SELECTION GRADE**

Officials present:-

- (i) The Director General of Police, Tripura
- (ii) The Pr. Secretary, GA(P&T) Department
- (iii) The IGP (Admin), Tripura
- (iv) The AIGP (HQ) & (Esst.). Tripura
- (v) The Addl. Secretary, GA (P&T) Deptt

The Chief Secretary, Tripura was on chair.

2. A threadbare discussion was held on the judgment and order of the Hon'ble High Court of Tripura in connection with W.P.(C) No.419 of 2021 wherein the Hon'ble High Court issued a directive to the State Respondent for creation of one grade namely TPS SSG in TPS Rules within a period of 3(three) months from the when the representation received from the petitioner alongwith a copy of the order. During the discussion, the following points were emerged:-

(i) The Committee examined the decision taken by the Empowered Committee for Coordination and Policy Initiative (ECCPI) and it is observed that a decision has been taken in that meeting towards creation of Tripura Police Service Senior Selection Grade after observing all rules and regulations and to identify the post for this grade.

In the said meeting of ECCPI, there was also a decision for allowing financial incentive to the Government employees holding the higher posts of higher pay level with full duty charge since, there is a bar on promotion of Government employees due to pending SPL before the Hon'ble Supreme Court regarding Reservation Policy. But, recently State Government has framed a Promotion Policy for allowing ad-hoc promotion as one time measure pending finalization of SLP before the Hon'ble Supreme Court of India.

During the discussion in the meeting, the Committee feels that the Empowered Committee for Coordination and Policy Initiative (ECCPI) is not appropriate forum to recommend creation of TPS SSG. Moreover, the said decision of the ECCPI can neither be termed as Government decision nor it is a decision of legislature. Moreover, for cadre review of any service there is a provision of cadre review committee and its specified procedure.

(ii) In the year 2007, there was decision of the Government for creation of TPS SSG in TPS Rules. After that the cadre has been reviewed and enhanced in the year 2010 as per proposal of PHQ. In the said proposal of PHQ reference has not been made for creation of TPS SSG. Though creation of TPS SSG was not considered but cadre review of the TPS Rules was done after the decision during the year 2007.

(iii) It was also discussed in the meeting that during year 2015, for cadre review of TPS, PHQ has viewed as follows "since Police is a uniformed service which reflects on discipline, command and control, it must be ensured that creation of a separate SSG does not affect the command structure of the hierarchy. It may also be noted that TPS officers in Gr-I (after completion of 3 years) and Senior Selection Grade, if created will have to hold the post in the rank of SP only. It is therefore, not recommended to create separate posts of SP/AIG rank (SSG Posts) among the SP rank posts (TPS Gr.I). It is to mention that if District SP posts are generally cadre posts in the IPS and any earmarking of the District SP posts as SSG posts would prevent the posting of TPS Grade-I officers to the post of District SP.

Further, it will also create and issue regarding wearing of proper ranks on the uniform among IPS/TPS officers.

Considering the above, it is not recommended to create any SSG as a promotion posts in TPS inline of TCS Cadre."

(iv) The issue of comparison between the TCS & TPS cadre schedule in the context of creating TPS SSG has been examined and discussed at length. It is observed that TCS & TPS cadre services rules are totally different one. Because, nomenclature and posting are also different. Thus prospect in carrier progression in TCS & TPS are un-comparable. As such, there may not be equity in the two cadre

services. Generally, TPS Gr-II officers are posted as SDPO (Sub-Divisional Head) in the Sub-Division, whereas a TCS Gr-II officer is posted as Dy. Collector/BDO etc. Similarly, TPS Gr-I officers are posted as Addl. SP and SP in the District after 3(three) years of service in TPS Gr-I whereas TCS Gr-I officers are posted as SDM in the Sub-Division. And the officers from TCS SSG are being posted as Addl. DM i.e. at district level though it is not independent district charge like a Superintendent of Police of TPS Gr-I. Generally it has been observed that TCS SSG officers are being considered promotion to IAS after 25-30 years or more. At present, there are few officers from 1990 batch of TCS who are yet to get promotion to IAS, whereas, some TPS officers of 1998 batch have already promoted to IPS during the year 2014 and so on.

(v) The cadre review instruction/guideline of the Govt. has been consulted in the meeting. It has been observed that as per guidelines of Cadre Review of Cadre Services Rules, the proposal would be formulated to the extent possible in consultation with the representative of Service Associations. While drafting the proposal, all issues like expected changes in the organizations activities, automation, amendment in the business process, requirement planning, plugging the skill gaps, cadre structure, career progression, financial implications etc. must be analyzed and made part of the proposal. So, DGP, Tripura shall take views of all stakeholders of the Tripura Police Service towards creation of new grade namely TPS SSG in TPS Rules as common interest is involved in expansion of cadre by creating new grade.

(vi) The committee has also opined that some financial benefits may be given to the TPS Gr-I officers if they are not getting any promotion after considerable time to IPS inspite of having all requisite/eligibility for promotion. Matter of provisioning Dynamic Career Progression or MACP may be examined to provide financial benefits to TPS Officers if they are not getting promotion or uplift during service tenure in TPS Gr-I level.

(vii) DGP, Tripura shall identify the posts keeping in view of all contexts of service conditions on analysis of cadre allocation of existing IPS and TPS posts and shall examine the requirement of creating new grade in the TPS Rules.

Meeting ended with thanks to all.

Sd/-

Chief Secretary to the
Government of Tripura

15. Finally, Learned Senior Counsel, Mr. S. Deb submitted that since the State authority has failed to implement the directions of Learned Single Judge, so, the appeal preferred by the State may be dismissed with costs with direction to the State Government to implement the same.

16. We have heard detailed submission of Learned Counsel of both the sides and also perused the judgment of the Learned

Single Bench. In course of hearing, Learned Senior Counsel for respondent-petitioners relied upon few citations.

17. In **State of Tripura and Others vs. K.K. Roy** dated 12.12.2003 reported in **(2004) 9 SCC 65**, Hon'ble the Apex Court in Para No.6 observed as under:

"6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the Appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the Appellant should have followed the said principle."

18. In **Food Corporation of India and Others vs. Parashotam Das Bansal and Others** dated 05.02.2008 reported

in **(2008) 5 SCC 100**, Hon'ble the Apex Court in para No.13 and 21 observed as under:

"13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the Court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a Superior court of the country.

21. We fail to understand how the cadre of Medical Officers would be important, as like the respondents, they also do not contribute towards the main functions of the appellant. Such a plea even otherwise is wholly untenable. An employee is an employee. How the employees would be structured is undoubtedly within the realm of the statutory authority but by reason thereof, it cannot tinker with their essential fundamental right."

19. In **Soma Paul vs. State of Tripura and Ors.** dated 31.03.2016 reported in **(2016) 2 TLR 90** wherein this High Court of Tripura in para No.13 observed as under:

"13. It is the admitted position that all the petitioners have been languishing in the post of Senior Instructor, Group-C (non-Gazetted) now for about 9 years without any promotion whereas in the similar post for the other department after five years, an incumbent becomes eligible for consideration of promotion to the next higher grade. This is not a fair management practice. The fairness of action is fundamental to the state action, which the respondents have failed to discharge so far. Hence, it is directed that the respondents shall formulate a scheme for promotion from the post of Senior Instructor, Group-C (Non-gazetted) for the Science Department or for the post of Instructor, Group-C (non-Gazetted) for the Science Department within a period of 6 months from today. In terms of the said scheme, the petitioners shall be considered, if they are otherwise eligible for such consideration."

20. In **Hukum Chand Gupta vs. Director General, Indian Council of Agricultural Research and Others** dated 25.09.2012 reported in **(2012) 12 SCC 666**, Hon'ble the Apex Court in para No.16 observed as under:

"16. The Assured Career Progression Scheme for the civilian employees was introduced on the recommendations of the Fifth Central Pay Commission. It was introduced with a view to provide a 'Safety Net' to deal with problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Under this scheme, it was decided to grant two financial upgradations on completion of 12 years and 24 years of regular service respectively. It was further provided that isolated posts in Group A, B, C and D categories which have no promotional avenues shall also qualify for similar benefits. Grant of financial upgradations under the ACP Scheme was, however, made subject to the conditions mentioned in Annexure-I of Office Memorandum No.35034/1/97- Estt(D) dated 9-8-1999. The conditions in Annexure I indicate that the ACP Scheme envisages only a placement in the higher pay-scale/grant of financial benefits (through financial upgradation). This is given to the Government servant concerned, on personal basis only. It neither amounts to functional/regular promotion nor requires creation of new posts for the purpose. The aforesaid clarification makes it abundantly clear that the financial upgradation was granted to Shri Madan strictly in conformity with the aforesaid scheme. Therefore, the objections raised by the appellant were without any basis and wholly misconceived."

21. Referring the aforesaid citations, Learned Senior Counsel for the respondent-petitioners submitted that since the TCS Officers of the State of Tripura have given the benefit of SSG by way of amendment of the Service Rule and also the same Government on principle intended to extend the same benefit for the TPS Officers who are also get selected through the same recruitment process being followed for the TCS Officers but with

an ulterior motive to deprive the respondent-petitioners intentionally is delaying to implement the direction of the Learned Single Bench and Learned Senior Counsel further submitted that as submitted by Learned Advocate General, that some of the respondent-petitioners, by this time, have got promotion as IPS, so, the plea/stand taken by the respondent-petitioners cannot be accepted as a genuine one because according to Learned Senior Counsel, admittedly some of the respondent-petitioners were given the benefit of IPS by the UPSC but if the directions of the Learned Single Bench is not implemented, then the TPS Officers in the coming days, who would be appointed as TPS Officers, Grade-II would be deprived of getting the promotion like the present respondent-petitioners.

22. We have given anxious hearing on the subject matter. It appears that the matters in issue are not a new one rather it is pending since 2007. It is also on record that the TCS Officers of the State have given the benefit of SSG to their grade by way of 25th Amendment of Tripura Civil Service Rules 1967 in the year 2005. From the referred communications of the Government, it is apparent on record that the Government in the year 2007, decided to amend the Tripura Police Service Rules, 1967 to provide the benefit of SSG to the TPS Officers. But for some unknown reasons the same benefit could not be extended to the TPS Officers of the State for which the respondent-petitioners were compelled to approach to the High Court seeking relief and accordingly, a direction was given to form a policy. It is the

admitted position that the Court cannot direct the State Government to frame a policy or to frame/amend any rule for the benefit of the employees as well as the officers of the Government, but if it is found that serious prejudice is caused, in that case the Court cannot remain as a silent spectator. More interestingly, in pursuance of the judgment and direction of the Hon'ble Single Bench, which is presently under challenge before this Bench, a meeting under the Chair of Chief Secretary of Tripura was held on 30.10.2021 to discuss and decide the issue regarding creation of one grade in TPS namely "SSG". But in para 3, the Committee referred the observation of 2015 Cadre Review of TPS, PHQ and ultimately came to an observation that no recommendation may be made to create any SSG as a promotion post in TCS in line of TCS Cadre. But the said Committee in para nos.5 and 7 made a different contradictory findings, from which it appears that the matter be remanded back to the State Authority to reconsider and to rethink on the issue for coming to a definite finding regarding the observation made by the Learned Single Bench.

23. Learned Advocate General although referred that the State Cabinet has taken a decision in this regard, but in this regard nothing is apprised to the Court in detail, so, this Court at this stage cannot form any decision on the submission of Learned Advocate General. However, since the formation of rule is the prerogative of the State Executive, so, the matter is left to the

discretion of the State Government to take an appropriate decision on the subject matter in issue.

24. So, considering the facts and circumstances of this case, this Court does not find any suitable ground to allow the appeal filed by the State-appellants and accordingly, the appeal stands dismissed being devoid of merit. The matter is remanded back to the State Government to take an appropriate decision in the light of the minutes dated 30.10.2021 signed by the Chief Secretary as expeditiously as possible and to communicate the same to the respondent-petitioners. It is expected that, being a welfare State, the State Government shall consider the grievances of the petitioners, so that no injustice is caused to them. With this observation, this Writ Appeal stands disposed of.

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

JUDGE

JUDGE

सत्यमेव जयते

SABYASACHI
BHATTACHARJEE

Purnita

Digitally signed by
SABYASACHI BHATTACHARJEE
Date: 2024.04.09 14:27:41
+05'30'