

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 1046 OF 2022

1. **Sri Biplab Das**, S/o of Biswajit Das, R/o Hatipara,
Near Yuva Ratna Sangha, P.O. Shalbagan, P.S. Airport,
District-West Tripura, PIN-799012, Aged about 43 years.
 2. **Sri Gopesh Debnath**, S/o Sri Gopal Chandra Debnath,
R/o Malanchanagar, Kunjaban, P.O. Kunjaban, P.S. New Capital
Complex, District-West Tripura, PIN-799006, Aged about 42 years.
-**Petitioners.**

Vrs.

1. **The State of Tripura**, represented by its Principal Secretary,
Department of Higher Education, Govt. of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura, PIN-799006.
2. **The Director of Higher Education**, Department of Higher Education,
Govt. of Tripura, P.O. Agartala, P.S. West agartala, District-West Tripura,
PIN-799001.
3. **The Principal (In-Charge)**, Govt. College of Art and Craft,
Lichubagan, P.O. Agartala Secretariat, P.S. New Capital Complex,
District-West Tripura, PIN-799010.
4. **The University Grants Commission**, represented by its Secretary,
Bahadur Shah Zafar Marg, New Delhi-110002.

..... **Respondents.**

For the petitioner (s) : Mr. Arijit Bhaumik, Advocate.
Mr. S. Dey, Advocate.

For the respondent (s) : Mr. Mangal Debbarma, Addl. G.A.

Date of hearing and : **29.07.2024**
date of delivery of
judgment and order

Whether fit for : No
reporting

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order(Oral)

By means of filing the instant writ petition, the petitioners have
prayed for following reliefs:

“(i) Issue notice upon the Respondents,

(ii) Call for the records,

(iii) Issue Rule calling upon the Respondents to show cause as to why the Petitioners shall not be granted the pay scale meant for Assistant Professors in Arts Colleges (Pay Scale of Rs.57,700-1,82,400/- alongwith the relevant Grade Pay) from the date of acquisition of essential qualifications required for the post of Assistant Professor alongwith all arrears of financial benefit.

AND

Issue rule calling upon the Respondents to show cause as to why the Petitioners shall not be designated/absorbed as Asst. Professor in Arts Colleges alongwith relevant pay scale and Grade Pay for the post of Assistant Professor in Arts Colleges as per the UGC Regulations, 2018.

(iv) And after hearing the parties, be pleased to make the rule absolute.

AND/OR

Pass any other order/orders as deemed fit and proper by this Hon'ble Court."

2. Heard Mr. A. Bhaumik, learned counsel appearing for the petitioners. Also heard Mr. M. Debbarma, learned Addl. G.A. appearing for the State-respondents.

3. The facts of the case are that the respondents had issued an advertisement dated 22nd September, 2009 inviting applications from Indian Nationals permanently residing in Tripura for filling up the posts of Instructor of Painting, Instructor in Applied Art, Instructor in Sculpture, Instructor in Environment & Indian Heritage, Instructor in Graphics (Print Making) and Instructor in Ceramics & Pottery. The petitioner no.1 applied for the post of Instructor in Painting and petitioner no.2 applied for the post of Instructor in Environment & Indian Heritage. The essential qualifications prescribed for filling up the posts of Instructor in Painting viz. (a) Madhyamik or equivalent examination passed from any recognized Board, (b) 5 years Diploma/Degree or 4 years Degree in Visual Art/Fine art in respective stream from any recognized University. The essential qualifications prescribed for filling up the post of Instructor in Environment & Indian Heritage viz. (a) H.S.+2

examination passed from any recognized Board, (b) Graduate (Hons.) or M.A. in History/History in Arts from any recognized University. Desirable qualification: i) teaching experience in degree College.

4. Having noticed the said advertisement, both the petitioners had applied for the posts of Instructor in Painting and Instructor in Environment & Indian Heritage respectively. The petitioners had participated in the selection process and having selected, they were appointed in the said posts under Memo. dated 25.10.2010 [Annexure-2 to the writ petition]. It is the case of the petitioners that at the time of participating in the selection process they were possessing Masters Degree and after appointment to the said posts they cleared National Eligibility Test (NET). The plea of the petitioners is that they were appointed as Instructors, but, they have been discharging their duties of teaching the students of the Colleges of the State, which are performed by Assistant Professors as per UGC guidelines, but, they are deprived of their legitimate pay scale prescribed for Assistant Professors under the UGC guidelines. The petitioners had made repeated representations [Annexures-10 & 11 to the writ petition] to the authority concerned to consider the enhancement of their pay scales and treat them as Assistant Professors, but those respondents were not responded to compelling them to file the instant writ petition.

5. Mr. Bhaumik, learned counsel appearing for the petitioners has strongly argued that since the petitioners have been performing their duties as Assistant Professors, they are entitled to be treated as Assistant Professors. The petitioners are also entitled to regular pay scale prescribed for Assistant Professors. According to Mr. Bhaumik, learned counsel for the petitioners,

denial of extending the benefit of regular pay scale to the petitioners is arbitrary, discriminatory and violation of the principles of equal pay for equal work.

6. Opposing the submissions of learned counsel appearing for the petitioners, Mr. Debbarma, learned Addl. G.A. submitted that the petitioners were appointed in the light of the advertisement published by the State-respondents in the year 2009 against the post of Instructor in Painting and Instructor in Environment & Indian Heritage and they joined in service on 01.10.2010 as Instructors but not as Assistant Professors. It is further contended that knowingly well that the posts advertised were meant for filling up the posts of Instructors and not for Assistant Professors, they applied for the posts of Instructors and on being selected they were appointed to the post of Instructors in the respective streams. Mr. Debbarma, learned Addl. G.A. has further submitted that there is specific recruitment rule for appointment of Assistant Professors and it is strictly in accordance with the UGC guidelines which the State has adopted in respect of appointment of Assistant Professors in the State of Tripura. So, the petitioners in no way be treated as equal to those of the Assistant Professors who are appointed directly against the posts of Assistant Professors in the respective subjects. Learned Addl. G.A. has prayed for dismissal of the writ petition.

7. I have considered the submissions advanced by learned counsel appearing for the parties.

8. There is no dispute that the petitioners were appointed as Instructors in the respective streams i.e. Instructor in Painting and Instructor in Environment & Indian Heritage, in the year 2010. In view of the submissions

advanced by learned counsel appearing for the parties, this Court in this writ petition will only decide whether the petitioners are entitled to get equal pay as those of Assistant Professors working appointed in various Colleges of the State. It is admitted in the counter affidavit that the petitioners were asked to perform the duties of a teacher as stopgap arrangement, but, their services are not utilized regularly.

9. I have considered the submissions of learned counsel appearing for the petitioners that in the year 2009 there were no posts of Instructors in the respective streams as per UGC guidelines, but, violating the UGC guidelines, the State-respondents had advertised the posts of Instructors in various streams.

10. This submission that State-respondents had violated the guidelines framed by the UGC cannot be considered by this Court at this stage after almost 15 years because the petitioners had responded to the said advertisement and participated in the selection process on their own wisdom. None had compelled them. The petitioners accepted their appointments against the said posts. If they had any grievance or if they found any illegalities in issuance of the advertisement, then, they would have challenged the said advertisement after its publication but, they did not do so and preferred to get appointed in the posts of Instructors.

11. Now, after lapse of 15 years, they cannot raise their grievance about the mode of their selection in the posts of Instructors. The petitioners are simply estopped and have acquired their right to ventilate their grievance regarding their appointments in the respective streams of Instructors.

12. It is also well established that the State cannot be compelled to follow the UGC guidelines. The UGC guidelines clearly suggest that the State Govt. may adopt various provisions made in the guidelines for appointment of teachers in the Colleges. In view of this, it cannot be said, at this stage, that the State-respondents had appointed the petitioners violating the guidelines of UGC.

13. Without entering further into the merits of the case, the only question revolves around that whether the petitioners are entitled to get the pay scale prescribed for the Assistant Professors on the ground they are performing the duties of Assistant Professor by way of teaching the students regularly besides performance of other administrative works which are ordinarily supposed to be performed by the Assistant Professors. This is a settled proposition of law that whether a class of people performs similar and identical duties is not the matter to be decided by the Court. The Courts have no such expertise to examine or evaluate such complex matters. To decide whether a person or persons perform(s) duties similarly situated to others, it is absolutely within the domain of the authority concerned.

14. However, it is equally settled that the employees should not be subjected to exploitation if they really perform any such duties which are similar and identical to the persons performing the same duties.

15. In view of this, I direct the State-respondents to consider the claim of the petitioners for granting them the pay scale prescribed for Assistant Professors after examining their duties and responsibilities they perform/discharge. Needless to say, the State-respondents shall take decision within a period of four months from the date of receipt of the copy of this

judgment keeping in view or, to say it otherwise, in consonance with the provisions made in the UGC guidelines.

The instant writ petition stands disposed in the above terms.

JUDGE

SAIKAT
KAR

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by SAIKAT KAR
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