

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) No.140 of 2025

1. Dr. Sumana Majumdar, Age-52 years, wife of Sri Dipak Chandra Lodh, resident of near SDPO Office, Dak Banglow Road, P.O. & P.S. R. K. Pur, District: Gomati Tripura, PIN-799120.

.....Petitioner

_V_E_R_S_U_S_

1. The State of Tripura, to be represented by Principal Secretary, Department of (Higher) Education, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN-799010.
2. The Director, the Department of Higher Education, Government of Tripura, Office Lane, Agartala, West Tripura.
3. The Principal Secretary, Finance Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN-799010.

.....Respondents

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. K. Nath, Advocate.
For Respondent(s)	:	Mr. D. C. Saha, Advocate.
Date of hearing	:	04.12.2025
Date of pronouncement of Judgment and order	:	08.12.2025
Whether fit for reporting	:	YES

HON'BLE JUSTICE DR. T. AMARNATH GOUD
_F_I_N_A_L_O_R_D_E_R_

Heard.

[2] The present petition has been filed under Article-226 of the Constitution of India directing the respondents for quashing and cancelling the memo dated 13.02.2025, issued by the Addl. Secretary to the Government of Tripura, Higher Education Department, whereby notification bearing No.F-1(716)DHE/Esst (G)/2022/2728, dated 21.09.2022, i.e. the scheme for absorption of Post Graduate Teachers as Assistant Professor in degree college has been withdrawn.

[3] The petitioner has prayed for the following reliefs:

“i. 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 quashing and cancelling the Memo, dated, 13.02.2025, issued by the Addl. Secretary to the Govt. of Tripura, Higher Education Department, whereby notification, bearing no. F-1(716)DHE/Esst (G)/2022/2728, dated, 21.09.2022, i.e., the Scheme for absorption of Post

Graduate Teachers as Assistant Professor in degree colleges has been withdrawn.

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 absorb the Petitioner to the post of Assistant Professor.

iii. Make the rules absolute.

iv. Call for records.”

[4] The facts in brief are that the petitioner filed this present petition seeking necessary order/direction from the respondents to absorb the petitioner to the post of Assistant Professor. The petitioner also sought for quashing and cancelling the memo dated 13.02.2025, issued by the Addl. Secretary to the Government of Tripura, Higher Education Department, whereby notification, bearing No. F-1(716)DHE/Esst (G)/2022/2728, dated, 21.09.2022, i.e., the Scheme for absorption of Post Graduate Teachers as Assistant Professor in degree colleges has been withdrawn.

[5] Hence, the present petition has been preferred by the petitioner before this Court for redress.

[6] Mr. P. Roy Barmna, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the petitioner has submitted that the petitioner is serving in the post of Post Graduate Teacher (Higher Education), Department of Psychology w.e.f 01.07.2010 and presently posted at Netaji Subhash Mahavidyalaya, Udaipur.

[7] The petitioner was appointed on 20.03.1997, as part time contract teachers under the respondent No.2. After an interview the petitioner was recommended for engagement as part time contract teacher in Psychology subject. After the engagement, the petitioner continued as part-time contract teacher under the respondents and the petitioner discharged unblemished service to the satisfaction of her authority. At no point of time there was any blemish in the service of the Petitioner. In the year 2010 the State of Tripura took a policy decision to regularize 292 (Two hundred ninety two) existing part time contract teachers as Post Graduate Teacher under the Directorate of Higher Education, Govt. of Tripura. In pursuant thereto, vide Memo., dated, 10.06.2010, issued by the

Special Secretary & Director of Higher Education, Tripura, Offer of appointment to the post of Post Graduate Teacher was issued in favour of the petitioner.

[8] From the very beginning of appointment as PGT, the petitioner is posted at Govt. Degree College. It is necessary to mention here, that, in colleges the teaching faculties cannot be designated as Post Graduate Teachers. The petitioner and other Post Graduate Teachers were in essence discharging the duty and responsibility of Assistant Professors in Colleges but were designated as Post Graduate Teachers and were also not paid the salary and remuneration meant for Assistant Professors as per the UGC Guidelines. In spite of rendering the duty of Assistant Professor, the Petitioner is denied the pay scale of a Assistant Professor as per UGC guidelines which is violative of right of the Petitioner under Articles-14 and 16 of the Constitution of India and the principle of equal pay for equal work.

[9] Some Post Graduate Teachers, who are similarly situated with the petitioner and who also possessed the qualifications required for Assistant Professors as per the UGC Guidelines approached before this Court by filing writ petitions. Vide Judgment and Order dated 16.03.2021 passed in W.P. (C) No. 1391 of 2019 and other batch matters the Court held that, the said Post Graduate Teachers were discharging the duty of Assistant professors in Colleges and also possessed essential qualifications required for the post of Assistant professors. Therefore, the said 5 Post Graduate Teachers, who possessed the essential qualifications for the post of Assistant Professor, cannot be deprived of the equal pay attached to the post of Assistant Professors.

[10] Against the judgment and order, dated, 16.03.2021, passed by this Court in W.P. (C) No. 1391 of 2019 and other batch matters, the State of Tripura preferred Intra Court appeals before the Division Bench and thereafter, vide order dated 14.12.2021 the Hon'ble Division Bench stayed the operation of the directions. Thereafter, the respondents vide notification dated 21.09.2022, framed the scheme for absorption of PGT as Assistant Professor in degree colleges. Thereafter, 19 Post Graduate Teachers similarly situated with the petitioner, who were discharging the duty and responsibility of Assistant Professors in degree college/Law College and also possessed the qualifications meant for Assistant Professor, filed writ petition before this Court and subsequently, the learned Single Judge vide order dated

28.11.2022 allowed those petitions and directed to consider the absorption of the petitioners to designate them as Assistant Professor.

[11] It has been contended that from the Note No.12 it revealed that in pursuant to the judgment and order dated 06.12.2022, it has been decided by the department for absorption of 21 Post Graduate Teachers into the post of Assistant Professor with due approval of the authority wherein, the name of the petitioner was at Sl. No.21. Consequently, the petitioner submitted all necessary documents to the Principal, Netaji Subhash Mahavidyalaya, Udaipur, Gomati Tripura. Thereafter, the Addl. Secretary to the Govt. of Tripura, High Education Department, vide memo dated 05.01.2023, informed the petitioner that in compliance of the judgment of this Court absorption of Post Graduate Teacher as Assistant Professor 16 PGT has been absorbed as Assistant Professor vide notification dated 03.01.2023. In the said letter it is also mentioned that the rest of the eligible PGTs of different subjects will be accommodated as per the availability of category wise posts, by the department in future following the direction of the High Court.

[12] The Addl. Secretary to the Govt. of Tripura, Higher Education Department, vide Memo, dated, 13.02.2025, had withdrawn the scheme, dated, 21.09.2022, in connection with absorption of Post Graduate Teacher in the post of Assistant Professor working under the Higher Education Department. In the said Memo, it is mentioned, that, the Scheme has been implemented for absorption of PGTs into the post of Assistant Professor as one time arrangement in order to comply with the particular cases following the direction of this Court. In the said Memo, it is also mentioned, that, the order of the Court has been already complied with and the said scheme is withdrawn immediately.

[13] Most illegally and arbitrarily, scheme dated, 21.09.2022; have been withdrawn by the respondents. In spite specific and categorical direction given by this Court to absorb the petitioners and designate them as Assistant Professor in accordance with the scheme subject to availability of vacant post. Till date, respondents failed to comply the aforesaid order due to non availability of respective vacant post. But, most shockingly and surprisingly in the impugned Memo, dated, 13.02.2025, it has been mentioned, that, the order of the Hon'ble High Court has been already complied with. The withdrawal of the scheme has been actuated by misstatement and misrepresentation of basic facts justifying that,

the scheme has fulfilled its mission to mean that all the PGTs have been already absorbed. But the fact is otherwise. Out of 21 PGTs, 16 have been absorbed. The petitioner and 3 others have not yet been absorbed.

[14] In respect to similarly situated Post Graduate Teachers, the respondents have acted differently. While 16 posts of Graduate Teachers have already been absorbed as Asstt. Professor, the petitioner has been left out and without absorbing the petitioner, the scheme, dated, 21.09.2022, has been withdrawn. The scheme was formulated in terms of the direction of the Hon'ble High Court and for the purpose absorbing Post Graduate Teachers as Assistant Professors who are serving for long in Degree Colleges and discharging duties and responsibilities of Asstt. Professors. Until and unless all the Post Graduate Teachers are absorbed the scheme, dated, 21.09.2022, cannot be withdrawn. The non availability of post cannot be ground to deny the petitioner benefit of absorption. The fact, that petitioner's service has been utilized for long for discharging duties and responsibilities of Assistant Professor makes to loud and clear that, requirement of one Assistant Professor has been fulfilled by utilizing the service of the petitioner.

[15] Mr. D. C. Saha, learned counsel appearing for the respondents has submitted that it is fact that Part Time Contract Teacher (here-in-after mentioned as PTCT) were absorbed as Post Graduate Teacher under the Directorate of Higher Education, Tripura on 01.07.2010 and the procedure followed for recruitment for the post in school Education have been adopted for this purpose with certain terms and condition. The engagement of PGTs is guided by the prescribed Recruitment Rules (RR) under the Education (School) Department vide Notification No. F.1 (314)-DHE /Estt (G) /09 dated 07.06.2010. All the PTCTs working at Govt. General Degree Colleges had been appointed as PGT under Higher Education Department. They could not be absorbed as Assistant Professor considering the fact that Assistant Professor is a Group-A post being selected through Tripura Public Service advertisement against the vacant post as per RR of Assistant Professor framed following UGC regulations. There is no provision of absorption in the Assistant Professor post from PGTs. The petitioner's claim lack of merit because she had knowingly accepted the offer and appointment as a PGT with specific terms and conditions. By accepting these terms, the petitioner had essentially acknowledged and agreed to terms. The vacancies arise were filled-up in-terms of

the scheme and the same was withdrawn thereafter. There cannot be any mandamus to frame a scheme by Govt. or to reopen the scheme. In case of future vacancy that would arise in 31.12.2025 on retirement of Smti. Arpita Acharyya Psychology professor, the same will be filled up as per the procedure and guidelines but, automatically it will not go to the petitioner.

[16] The scheme has been implemented for absorption of the PGTS into the post of Assistant Professor as one time arrangement in order to comply with the particular cases following the direction of this Court of Tripura. There is no provision of absorption in the post of Assistant Professor and it is violating the existing Recruitment Rules/Government policy which was framed following the UGC Regulation, 2018, but as one time arrangement in order to comply with the particular cases following the direction of the Court, department had considered such cases and upon compliance of the order withdrawal the scheme as it is contradictory with the existing RRs/ UGC Regulation, 2018. Henceforth, the writ petition of the petitioner is devoid of any merit and liable to be dismissed without any direction to the State respondents.

[17] The Hon'ble High Court of Tripura vide common order dated 19.03.2024 passed in W.P. (C) No. 257 of 2023, W.P. (C) No. 272 of 2023, W.P. (C) No. 652 of 2023, W.P. (C) No. 653 of 2023 and W.P. (C) No. 258 of 2023 had pleased to direct *inter alia* as follows:

"In view of this, the respondents are directed to consider the grievance of the petitioners in the interest of the students as early as possible keeping in view of the spirit of the order dated 06/12/2022 passed in W.P. (C) No. 276/2022 and W.P. (C) No. 277/2022. whereas, the Hon'ble High Court of Tripura vide common Judgment & Oder dated passed in W.P. (C) No. 276/2022 and W.P. (C) No. 277/2022 had been pleased to direct *inter alia* as follows: in compliance of the said scheme, as many as 5 (five) Post Graduate Teachers were designated as Assistant Professor and they were absorbed against available vacancies. There are many other Post Graduate Teachers and Graduate Teachers and according to learned Court for the petitioner, there are available vacancies also. The petitioners names were kept in the waiting list.

In the light of the above scheme quoted qua the stand taken by the respondents. I direct the respondents to consider the absorption of the petitioners and to designate them as Assistant Professor in accordance with the scheme subject to the availability of the vacant post.

In case vacancies are available, necessary exercise of absorption of the petitioners as Assistant Professor shall be completed within a period of 6(six) week from the date the respondents shall receive a copy of the order.***"

[18] Thereafter, the respondent-department had examined her case and as there was no post exists in respective subject and category, absorption was regretted by issuing a speaking order dated 20.01.2025. Hence, it may be stated here that the present petition is devoid of any merit and liable to be dismissed.

[19] In view of above arguments advanced by the learned counsel appearing for the parties, this Court is of the opinion that 16 Nos. Post Graduate Teachers (PGTs) vide Notification dated 15.10.2022 and 05.01.2023 working in different Colleges/Institutions under Higher Education department had been absorbed as per the scheme in the available vacant posts, category wise in the respective subject in accordance with the Judgment of this Court. There is no provision of absorption in the Post of Assistant Professor and it is violating the existing Recruitment Rules which was framed following the UGC Regulation, 2018 but as one time arrangement, the department had considered such cases and upon compliance of the order, withdrawn the scheme, as it is contradictory with the existing RRS/ UGC Regulation. The rest of the eligible PGTs of different could not be accommodated due to non-availability of vacant post in respective category.

[20] Admittedly, it seen from record that the petitioner was appointed as part time contract teacher under the Higher Education Department, government of Tripura, as per Recruitment Rules (RRs), there is no scope to absorb into the post of Assistant Professor without proper selection process through Public Service Commission following Recruitment Rules of Assistant Professor. Therefore, to examine the case of the petitioner, the relevant contents of the judgment of the Hon'ble Apex Court in ***Union of India v. Indian Navy Civilian Design Officers Association and another*** reported in ***2023 SCC OnLine SC 173*** is extracted as under:

“.....9. Before adverting to the rival contentions raised by the learned counsels for the parties, it deserves to be noted that the power of judicial review of the High Courts in the matter of classification of posts and determination of pay scale is no more *res integra*. It has been consistently held by this Court in plethora of decisions that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and the interference of the Court was absolutely necessary to undo the injustice.

So far as the facts of the present case are concerned, it is not disputed that the Recruitment Rules governing the JDOs are as per the SRO 367 dated

08.12.1996, as amended by SRO 246 dated 21.11.2002, whereas the Recruitment Rules governing the CTOS (Design) are as per the SRO 132 dated 12.05.1982. The probation period in case of CTOs is longer than that of JDOs. The duties and responsibilities of both the posts are different and the promotional avenues also have different duration and different criteria. There was not a single error, much less grave error pointed out by learned Senior Advocate. Mr. Khurshid, in the fixation of the pay scales for the JDOS and CTOs, which would have justified the interference of the Tribunal.

16. Much emphasis was placed by the learned senior advocate Mr. Khurshid on the noting made by the Officer of the Naval Department in the file recommending pay scale of JDOs equivalent to that of CTOS, however, it may be noted that a noting recorded in the file is merely an expression of opinion by a particular officer, and by no-stretch of imagination such noting could be treated as a decision of the Government.

17. The powers of judicial review in the matters involving financial implications are also very limited. The wisdom and advisability of the Courts in the matters concerning the finance are ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party.

18. In that view of the matter, we are of the opinion that the Tribunal and the High Court had committed gross error in interfering with the pay scales recommended by the Fifth Central Pay Commission and accepted by the appellant for the posts of JDOs and CTOS, and in upgrading the pay scale of JDOs making it equivalent to the pay scale of CTOS.

19. Consequently, the impugned orders passed by the High Court and the Tribunal are quashed and set aside. The appeal stands allowed accordingly.”

[21] Admittedly, under Article-226 of the Constitution, High Court cannot direct the State government to frame any scheme since, it is welfare State and framing any scheme is completely under the domain of the State. However in pursuance of the judgment in WP(C) No.1391 of 2019 and batches dated 16.03.2021, the Govt. framed scheme. In the said batch of writ petitions, petitioner is not a party. Later the petitioner filed writ petition being W.P. (C) No. 276 of 2022 and others and decided on 06.12.2022, wherein, respondents were directed to decide and consider the case of the petitioner. It has been categorically observed in the order of this Court that the appointment of the petitioner would depend on the availability of vacancy. Out of 21 persons, 16 were appointed and now, the scheme is withdrawn. For the purpose of reference, the same memorandum dated 13th February, 2025 may be extracted hereunder:

“GOVERNMENT OF TRIPURA
EDUCATION (HIGHER) DEPARTMENT
No.F.1 (716) DHE/ESTT(G)/2022/617 Dated, the.. 13 Feb. 2025
MEMORANDUM

Subject: Withdrawal of scheme in connection with absorption of Post Graduate Teachers (PGTs) to the post of Assistant Professor working under the Department of Higher Education.

The Education (Higher) Department had framed a scheme in compliance of the interim order of the Hon'ble High Court, Tripura passed on 16.03.2021 arising upon WA 201 to 205 of 2021 in W.P(C) No.1391 to 1395 of 2019 for absorption of Post Graduate Teachers (PGTs) in the post of Assistant Professor working under the Department of Higher Education and notified vide No.F.1(716) DHE/ESTT(G)/2022/2728, dated 21st September, 2022.

2. The scheme has been implemented for absorption of the PGTs into the post of Assistant Professor as one time arrangement in order to comply with the particular cases following the direction of the Hon'ble High Court of Tripura.
3. Since, the order of the Hon'ble High Court has been complied with already, the said scheme is hereby withdrawn with immediate effect.

Signed by Animesh Debbarma
Date: 12-02-2025 12:18:55
Additional Secretary to the
Government of Tripura

[22] It is also stated in the petition that one Dr. Arpita Acharyya will retire from service on 31.12.2025. The aforesaid post belongs to UR category which will be vacant w.e.f. 31.12.2025 and the petitioner is eligible to be absorbed in the said post. Since, the scheme is not in force as the same is withdrawn, it is not for this Court to direct the respondents to reopen the scheme which is withdrawn is *ultra vires*. Insofar as the absorption of the petitioner in the place of Arpita Acharyya is concerned, there cannot be any direction can be given as in that case, the respondents would follow their due procedure of appointment as enunciated.

[23] In view of the judgment of the Hon'ble Apex Court cited (*supra*), this Court opines that in the absence of any provision in the existing Recruitment Rules (RRs) and without any proper selection process through Public Service Commission following the Recruitment Rules of Assistant Professor, no direction can be imposed upon the respondents for promotion/absorption of the petitioner into the post of Assistant Professor. This Court is of the opinion that no mandamus can be issued to the Govt. to frame a scheme or to reopen the scheme that is already withdrawn for whatever the reason. Moreover, the impugned withdrawn of scheme has indicated that the orders of the High Court passed in W.P. (C) No. 276 of 2022 has been complied and existing vacancies have been filled up. The respondents did not prefer a writ appeal against the WP(C) No.1391 of 2019 and batches dated 16.03.2021 but, framed a scheme and filled the vacancies and to their satisfaction, withdrawn the scheme. Though those orders are not challenged, it is not open for the petitioner to rely upon an order which accordingly to this Court, *per incurium*.

Therefore, no relief can be granted in the light of the above discussion. Hence, the present writ petition filed by the petitioner is dismissed and the impugned order dated 13.02.2025 is hereby upheld.

[24] With the above observations and directions, the instant petition is dismissed and thereby, the same is disposed of. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

DR.T. AMARNATH GOUD, J

A. Ghosh

ANJAN GHOSH Digitally signed by ANJAN GHOSH
Date: 2025.12.17 15:13:34 +05'30'

