

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) No.476 of 2024

1. Sri Bimal Ch. Paul, son of late Girindra Ch. Paul, resident of village Nutanbazar, P.O. & P.S. Nutanbazar, Sub-Division- Amarpur, District: Gomati Ttipura, aged about 59 years.

.....Petitioner

_V_E_R_S_U_S_

1. The State of Tripura, represented by the Secretary, Department of School Education, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS- New Capital Complex, Sub-Division- Agartala, District- West Tripura.
2. The Secretary, Department of School Education, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS- New Capital Complex, Sub-Division- Agartala, District- West Tripura.
3. The Secretary, Department of Finance, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO-Kunjaban, PS- New Capital Complex, Sub-Division-Agartala, District- West Tripura.
4. The Director, Department of Secondary Education, Government of Tripura, having his office at Shiksha Bhavan, Office Lane, PO-Agartala, PS-West Agartala, Sub-Division- Agartala, District- West Tripura.
5. The Director, Department of School Education, Government of Tripura, having his office at Shiksha Bhavan, Office Lane, PO-Agartala, PS- West Agartala, Sub-Division- Agartala, District- West Tripura.
6. The District Inspector of Schools, Directorate of Secondary Education, Government of Tripura, Agartala, west Tripura.

.....Respondents

For Petitioner(s)	:	Ms. A. Chakraborty, Advocate. Mr. P. L. Debbarma, Advocate.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A.
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 to quash the impugned letters dated 12.06.2020 & 03.07.2023 insofar as, it rejects the stepping up of pay in favour of the petitioner. Further, to revoke the impugned letters forthwith and grant the basic pay, in favour of the petitioner at par with the basic pay drawn by one Sri Santosh

Paul, holding the post of Post Graduate Teacher, under the Department of School EDUCATION, government OF Tripura with retrospective effect from the date of accrual of such anomaly alongwith arrears thereof.

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

“(1) 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 directing the respondents, to transmit the records, lying with them, for rendering substantive and conscionable justice to the petitioner, and for quashing/setting aside the impugned Letters dated 12.06.2020 & 03.07.2023 (Annexures-2 & 6 respectively supra);

(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, for mandating/directing them, to revoke/rescind the impugned Letters dated 12.06.2020 & 03.07.2023 (Annexures-2 & 6 respectively supra), and thereupon, for mandating/directing them, to forthwith make proper fixation of the pay and pension of the petitioner, and further directing them to release the arrears of salary and pension;

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

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

(v) Costs and incidental to this proceeding.”

[4] The facts in brief are that on 12.06.1990, the petitioner was appointed to the post of Assistant Teacher, under the Department of School Education, Government of Tripura, at a much later stage, it came to the notice of the petitioner that one Sri Santosh Paul, who was appointed to the post of Post Graduate Teacher, under the Department of School Education, Government of Tripura on 26.10.1990, i.e., much later to the appointment of the petitioner, has been drawing a higher basic pay, than that of the petitioner. Situated thus, the petitioner informed the same to the Department, which fetched no result. Pursuant thereto, in the month of November, 2019, the petitioner submitted a Representation, before the Directorate of School Education, Government of Tripura, Agartala, West Tripura, inter alia seeking for parity of pay with his junior.

[5] In response to the said Representation, the District Inspector of Schools, Directorate of Secondary Education, Agartala issued a Letter, to the Head Office & D.D.O., Dakshin Amarpur Town Higher Secondary School, Amarpur, Gomati Tripura. Under the purported veil of recovery of overpaid contributory allowance, the Assistant Audit Officer, Directorate of Audit, Government of

Tripura issued a Letter to the Headmaster, Dakshin Amarpur Town Higher Secondary School, Amarpur, Gomati Tripura, thereby directing him to recover the overpaid contributory allowance from the employees mentioned therein. It is stated that despite several Communications & the Representation made by the petitioner, the respondents have not taken any action whatsoever, for stepping up the pay of the petitioner, at par with the said junior, namely, Sri Santosh Paul.

[6] Being aggrieved, the petitioner presented a writ petition, before this Court, *inter alia* praying for grant the basic pay, in favour of the petitioner, at par with the basic pay, drawn by one Sri Santosh Paul, holding the post of Post Graduate Teacher, under the Department of School Education, Government of Tripura, with retrospective effect from the date of accrual of such anomaly, i.e., 01.10.2018, alongwith the arrears thereof. Thereafter, the said case fell for consideration, and vide an Order dated 21.06.2022, passed by this Court, the said case was disposed of, in pursuance of which the petitioner submitted a representation to the Director, Directorate of Secondary Education, Government of Tripura *inter alia* praying for stepping up of his pay. Pursuant thereto, the Director of Secondary Education, Government of Tripura issued a Letter thereby rejecting the claim of the petitioner for stepping up his pay.

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

[8] Ms. A. Chakraborty, learned counsel appearing for the petitioner has submitted that admittedly, the petitioner and the said Sri Santosh Paul had entered into service on 12.06.1990 & 26.10.1990 respectively, and hence, it is manifestly clear that the petitioner is senior to the said Sri Santosh Paul, and thereby, he is entitled to stepping up of his pay. It is most humbly and respectfully submitted that it is a settled principle in service jurisprudence that when the date of entry into the service of a Government servant is prior to another Government servant, who is holding the similar post, carrying the similar nature of duties & responsibilities, and both the posts carry the same pay scale, then the Government servant, appointed earlier, cannot draw lesser pay than the Government servant, later thereto, and in the event, the latter is drawing higher pay than the former, then in such circumstances, the pay of the former should be stepped up, at par with the latter. Applying the principle of 'Next Below Rule', the pay of the petitioner merits to be stepped up at par with the said Sri Santosh Paul.

[9] The anomaly of pay arose, with effect from 01.10.2018, whereby the petitioner is drawing a basic pay of Rs.72,100/- *per contra*, with effect from the said date, his junior, i.e., the said Sri Santosh Paul is drawing a higher basic pay of Rs.72,900/-. In view of the same, it is thus evidently clear that the petitioner is entitled to stepping up of pay, at par with his said junior. When the petitioner and said Sri Santosh Paul were appointed under the same employer, namely, Department of School Education, Government of Tripura, at that relevant time, both the posts of Assistant Teacher & the Post Graduate Teacher were the same & equivalent posts, carrying the same pay scale, and hence, it cannot be held that the petitioner and the said Sri Santosh Paul do not belong to the same post.

[10] It is a settled legal principle that on account of the wrong of the employer, an employee cannot be penalized. Applying this settled legal principle to the case in hand, it is most humbly and respectfully that even if it is conceded that overpayment was made in favour of the petitioner, but the same cannot result to any deduction from his salary. In view of the same, the anticipated recovery of compensatory allowance from the monthly salary of the petitioner is wholly unsustainable.

[11] From a plain reading of the impugned Letter dated 03.07.2023 (Annexure-6 supra), it is thus evidently clear that with effect from 12.06.1990 to 01.06.1997, all through, the petitioner was drawing higher pay than that of Sri. Santosh Paul, and only, with effect from 12.06.1997, Sri. Santosh Paul was drawing higher pay than that of the petitioner, presumably on the ground of fixation of pay, on the date of next increment. It is curious to notice herein that while both the petitioner and Sri. Santosh Paul were holding the same post of Assistant Teacher, whereas, the pay of Sri. Santosh Paul was fixed at Rs.5000/-, at the bottom of time scale of pay of Rs.5000-10,300/-, but the petitioner was fixed at Rs.1960/-, in a lesser pay scale of Rs.1700-3980/-.

[12] It has been contended that the said anomaly continued till re-fixation was made on 01.06.1996, and thereafter, the petitioner was consistently drawing higher pay than that of Sri. Santosh Paul upto the fixation made on 01.07.2017, but again, consequent upon the fixation made on 01.10.2018, whereas the basic pay of the petitioner was fixed at Rs.72,100/-, but the basic pay of Sri. Santosh Paul was fixed at Rs.72,900/-. The said anomalous position continued till 31.03.2021, on which date, the petitioner had proceeded on retirement. It is most humbly and

respectfully submitted that it is an admitted fact that the petitioner is senior to Sri. Santosh Paul, and both of them were holding the same post of Assistant Teacher. In such view of the matter, the pay of the petitioner merits to be stepped up, at par with Sri. Santosh Paul, with effect from 01.10.2018, the date of actual anomaly, and accordingly, the petitioner may be paid off the arrears thereof, consequent upon removal of such anomaly.

[13] It is well settled established principle of service jurisprudence that normally, a belated service related claim would be rejected on the ground of delay & laches, but an exception to the said Rule is cases relating to continuing wrong. It is most humbly and respectfully submitted that where a service related claim is based on a continuing wrong, relief merits to be granted, even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. Non-grant of the above mentioned benefit, in favour of the petitioner, is not intercepted by accrual of any third party rights, and therefore, the said benefit cannot be denied to the petitioner, on the ground of delay & laches.

[14] Mr. M. Debbarma, learned Addl.G.A. has submitted that in compliance with the judgment and order dated 21.06.2022 in connection with W.P(C) 466 of 2020, the department conducted personal hearing of the petitioner on 11.07.2022 and obtained views of the Finance Department vide U.O. dated 15.12.2022 and collected the service books of Sri Bimal Ch. Paul, A/T & Sri Santosh Pal, PGT for scrutiny. On scrutiny of the service book of Sri Paul, and it is found that one periodical increment on 01.06.1997, prior to allowing of CAS-I benefit was dropped. The pay of Sri Paul has been refixed allowing one increment on 01.06.1997 i.e., prior allowing CAS-I benefit which was recorded in the service book.

[15] In this connection, it is stated here that according to Pay Matrix 2018, Sri Bimal Ch. Paul drawn his pay in Level-13 and Sri Santosh Pal drawing his pay in Level-12 as per provision 14 of ROP Rules 2017, Finance Department clarification memorandum dated 9th January, 2020 and as per earlier observation of the Finance Department vide U.O No. 222/FIN/Estt-II/2019 dated 25.07.2019 Sri Bimal Chandra Paul, A/T is not entitled to stepping up of pay as it is not a fit case to be cover under the provisions of stepping up of pay because each of the incumbent concerned are drawing pay at different levels of Pay Matrix.

[16] The petitioner, Sri Bimal Chandra Paul, joined Government service as Post Graduate Teacher (PGT) on 12.06.1990 in the pay scale of Rs. 1450-3710/-. The alleged junior, Sri Santosh Pal, joined later as PGT on fixed pay basis on 26.10.1990, and was brought to the regular pay scale w.e.f. 01.10.1992. Before introduction of the TSCS (RP) Rules, 2017, the petitioner was drawing Grade Pay Rs.4800/-, whereas the said junior was drawing Grade Pay Rs.4600/-. Thereafter, by notification dated 11th October, 2018, the Government has approved to implement the recommendation made by the Expert Committee for the employees under the State Government and the new pay structure has been formulated with giving effect from 1st October, 2018 and the multiplication factor increased to 2.57 from 2.25 as provided in the TSCS (RP) Rules, 2017.

[17] Rule 7 (i) of the TSCS (RP) Rules, 2017 provides the pay in the applicable level in the Pay Matrix shall be the pay obtained by multiplying the existing basic pay by a factor of 2.25 and the figure so arrived at the located in the level of the pay matrix. Accordingly, the Tripura State Pay Matrix 2018 has been framed with 21 Levels by way of replacing the Tripura State Pay Matrix, 2017 and the Grade Pays correspond to the following Levels viz. Grade Pay Rs. 4800 → Level-13 holding by the petitioner and Grade Pay Rs.4600 → Level-12 junior to the petitioner. Accordingly, on 01.04.2017, the pay of the petitioner and the junior was correctly fixed by multiplying factor 2.25 as per the TSCS (RP) Rules, 2017 as the petitioner in Level-13, Pay Rs.59,930/- and his Junior in Level-12, Pay Rs.56,890/-.

[18] Later, due to different multiplication factors after giving effect the revised pay matrix, 2018, the Level-12 becomes 2.57 and Level-13 becomes 2.55 and thereby, the junior's pay rose to Rs.72,900/- whereas petitioner's pay stood at Rs. 72,100/- as on 01.10.2018. It is further clarified that as per ROP, 2017 pay of the petitioner stand Rs. 63,590/- on 01.07.2018 with multiplication factor of 2.25 and the pay of the petitioner stands Rs. 72,100/- on 01.10.2018 as Pay Matix, 2018 with multiplication factor of 2.55.

[19] On the other hand, pay of his junior stand Rs. 62,180/- on 01.07.2018 with multiplication factor of 2.25 and the pay stands Rs. 72,900/- on 01.10.2018 as per Pay Matrix, 2018 with multiplication factor of 2.57. The apparent anomaly arises solely due to structural factors of the Pay Matrix system, not due to any irregularity in fixation. The petitioner submitted a representation dated 15.06.2023,

seeking stepping-up of pay by invoking the order of this Court dated 21.06.2022 in W.P.(C) 466 of 2022 and claimed that his junior draws higher pay although both hold the same post, and he sought parity by stepping-up. It is pertinent to mention here that the representation was duly examined but found not maintainable under the applicable rules.

[20] Mr. Debbarma, learned Addl. G.A. further demonstrated as to why Stepping-Up Cannot Be Granted to the petitioner. The Petitioner and his Junior are in Different Levels of Pay Matrix. As Provision-14 of the TSCS (RP), Rules, 2017 pay is to be fixed strictly according to the level assigned to the grade pay. The petitioner is in level-13 and the junior is in level-12. Stepping up is permissible only when both employees are in the same level, which is not the case here.

[21] The finance department clarification specifically bar stepping-up in such cases. The Finance Department Memorandum does not override the statute rules because the impugned memorandum merely clarifies the statutory Rule-14 under the TSCS (RP) Rules, 2017 stating that “stepping-up is not applicable when employees are in different Pay Matrix Levels” and after 2018 level is changed.

[22] This clarification does not override the rule of the Pay Matrix under the TSCS(RP) Rules, 2017. It interprets and explains the statutory position, consistent with the Hon’ble Apex Court Law. The Finance Department clarifications specifically vide memo dated 09.01.2020 expressly states that stepping-up is not permissible when the senior and junior are in different levels. The Finance Department Clarifications vide U.O. Note No.222/FIN/Estt-II/2019 dated 25.07.2019 also confirms that pay anomaly arising due to different level wise multiplication factors is not a fit case for stepping-up. Therefore, the request of the petitioner is contrary to statutory rules and official clarifications.

[23] This Court after having heard the learned counsel appearing for the parties is of the view that the TSCS (RP) Rules, 2017 are statutory Rules, not executive instructions. The Pay Matrix under the TSCS (RP) Rules, 2017 is not a rule framed in exercise of powers under Article -309 of the Constitution. A rule framed under Article-309 is a statute, and therefore, Rule-14, Pay Matrix Levels, and Multiplication factors framed under the TSCS (RP) Rules, 2017 have full statutory force. Therefore, the petitioner's claim that departmental memoranda are

overriding the statute is misplaced, because the pay fixation undertaken is based solely on the statutory Pay Matrix under ROP 2017, not on any circular.

[24] Further, under Pay Matrix 2018, the petitioner's Level is 13 (GP Rs.4800) Factor 2.55 and his junior's Level-12 (GP Rs.4600) Factor 2.57. This difference in Levels is statutorily mandated, not created by departmental instruction. As per the structure of Pay Matrix, Different Levels = Different vertical pay progressions Employees in different Levels are not comparable for stepping-up purposes. Thus, the anomaly arises not due to any administrative decision but from statutory formula under the Pay Matrix, which is binding. The pay anomaly arises due to Senior and Junior is in different levels (Statutory Difference) in pay structure.

[25] In the case of ***Union of India v. R. Swaminathan***, reported in (1997) 7 SCC 690, the Hon'ble Apex Court has observed that "*stepping-up is permissible only when the senior and junior are in the same cadre, same post and same pay scale. If the junior is placed in a higher scale due to rules, stepping-up cannot be claimed*". This ruling squarely applies since Level-12 and 13 are distinct statutory levels.

[26] In the case of ***P. Jagdish v. Union of India*** (1997) 3 SCC 176, the Hon'ble Apex Court observed that "*stepping-up is not a vested right. It is allowable only when anomaly arises due to difference in date of increment, not when pay is fixed under a statutory rule.*" In the present case the petitioner's anomaly arises only due to multiplication facts under statutory Pay Matrix, hence, stepping-up is barred.

[27] In the case of ***State of Rajasthan v. Gopal Krishna Sharma***, AIR 1992 SC 1754, it has been observed that "higher pay to junior because of operation of Rules does not entitled senior to stepping-up." Which is exactly applicable in the present case as the junior's higher pay comes from the statutory multiplication factor. In the present case the respondents have followed the statutory TSCS (RP) Rules, 2017 along with Pay Matrix, 2018. The anomaly arises due to the statute itself, not due to departmental action.

[28] The respondents considered the case strictly as per Rule-14 of TSCS (RP) Rules, 2017 along with Pay Matrix, 2018 and after due examination, correctly concluded that stepping-up is not legally permissible. Stepping-up requires same

level/same scale but in the present case, the petitioner and his junior are in different statutory levels. The Hon'ble Apex Court forbids stepping-up in such circumstances. Stepping-up is not permissible under TSCS (RP) Rules, 2017 for employees in different Pay Matrix levels and uphold the pay fixation of the petitioner under Level-13 of the Pay Matrix, 2018. Government of Tripura, Finance Department vide notification dated 11th October, 2018 has approved to implement recommendation made by the expert committee that the date of effect of the revision pay/wages/pensions shall be from 01.10.2018.

[29] In TSCS (RP) Rules, 2017, the government of Tripura, Finance Department has formulated the pay fixation structure of pay of an existing employee in the revised pay. The initial pay of government employee who is in service on 31st March, 2017 and elected or is deemed to have elected under Rule-6 to be governed by the revised pay structure incorporated in these rules on and from 1st day of April, 2017, shall unless in any case the Governor of Tripura by special order otherwise directs, be fixed in the following manner:

“(i) The pay in the applicable Level in the Pay Matrix shall be the pay obtained by multiplying the existing basic pay by a factor of 2.25, rounded off to the nearest rupee and the figure so arrived at will be located in that Level of the Pay Matrix and if such identical figure corresponds to any Cell in the applicable Level of the Pay Matrix, the same shall be the pay, and if no such Cell is available in the applicable Level, the pay shall be fixed at the immediate next higher Cell in that applicable Level of the Pay Matrix. Refer to Illustration No.1 given at Annexure.”

[30] Learned Addl. G.A. draws attention of this Court clarifying explanation as Annexure-A. In response to the Note No.-6, it has been stated that the petitioner joined in service on 12.06.1990 as Post Graduate Teacher in the pay scale of Rs.1450-3710/-. Sri Santosh Paul joined in the service as Post Graduate Teacher on fixed pay basis on 26.10.1990 and allowed the regular pay scale w.e.f. 01.10.1992. The existing system of pay bands and Grade Pay applicable to the State Government employees has been placed by a new system of level based Pay Matrix w.e.f 01.04.2017 under the TSCS (RP) Rules, 2017 while the petitioner was drawing Grade Pay Rs.4800/- and Sri Santosh Paul was drawing Rs.4600/-. The Level corresponding to Grade Pay Rs.4800/- is Level 13 as per Pay Matrix 2018. The Level corresponding to Rs.4600/- is Level 12 as per the Pay Matrix 2018. Thus, pay of the petitioner on 01.04.2017 was fixed at the Level 13 corresponding to the existing Grade Pay Rs.4800/- of the Pay Matrix 2018. The Pay of Sri Santosh

was fixed on 01.04.2017 at the Level 12 corresponding to the Grade Pay Rs.4600/- of the Pay Matrix 2018. In this connection it is pertinent to mentioned here that as per ROP 2018 fixation factor of Level-12 is 2.57 and for level 13 is 2.55. As a result his salary (Rs. 72100/-) is fixed less than his junior's salary (Rs. 72900/-).

[31] As per clarification issued from the Finance Department vide notification dated 9th November, 2012, placing and clarification of an employee to pay band and grade pay, respectively shall be made on the basis of post held substantively by an employee and not on the basis of officiating pay scales held by an employee by way of CAS/ACP under TSCS(RP) Rules, as per Rules-4 and 17 of the TSCS(RP) Rules, 2009. Besides, while allowing the benefit of financial up-gradation under the ACP the concerned will continue to remain in his existing Pay Band, the Pay Band will not change as per Rule-10(8) of the TSCS(RP)Rules, 2009. It is seen that the petitioner was appointed on 12.06.1990 as Assistant Teacher in the pay scale of Rs.1450-3710/- but Sri Santosh Paul, PGT was appointed on 26.10.1990 as a Post Graduate Teacher on fixed pay basis. He was allowed regular scale of pay w.e.f. 01.10.1992 in the pay scale of Rs.1450-3710/-.

[32] In view of above observations and the arguments advanced by the learned counsel appearing for the parties, this Court is of the considered opinion that the writ petition fails and, accordingly, the same stands dismissed. As a sequel, miscellaneous application, pending if any, shall stands closed.

DR.T. AMARNATH GOUD, J

A. Ghosh

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