

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 587 of 2024

Smt. Purabi Debbarma

daughter of Sri Kshirode Ranjan Debbarma,
resident of Beltali, A.D. Nagar,
Agartala, P.S. A.D. Nagar,
District- West Tripura, PIN-799003

.....**Petitioner(s)**

Versus

1. The State of Tripura,

represented by the Secretary to the Government of
Tripura, Department of Higher Education, P.O. Kunjaban,
P.S. N.C.C., District- West Tripura, PIN- 799006

2. The Secretary cum Commissioner, to the Government
of Tripura, Department of Higher Education, New Capital
Complex, P.O. Kunjaban, P.S. N.C.C., District- West
Tripura, PIN- 799006.

3. The Director of Higher Education,
Government of Tripura, New Capital Complex,
P.O. Agartala, P.S. West Agartala, District- West Tripura,
PIN- 799006.

4. The Principal,
Tripura Institute of Technology,
Narsingarh, Airport Road, Singerbil, P.O. Agartala,
P.S. Airport Police Station, District- West Tripura,
PIN- 799009.

.....**Respondent(s)**

For the Petitioner(s) : Ms. Sujata Deb (Gupta), Advocate
Mr. Bikram Paul, Advocate
Ms. Rumpa Dey, Advocate

For the Respondent(s) : Mr. Kohinoor N. Bhattacharya, G.A.
Mr. M. Debbarma, Addl. G.A.

Date of hearing & delivery
of Judgment & order : 24.04.2025.

Whether fit for reporting : Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R (O R A L)

Heard Ms. S. Deb (Gupta), learned counsel appearing for the petitioner. Also heard Mr. Kohinoor N. Bhattacharya, learned G.A. representing the State respondents.

[2] This present petition is filed under Section 226 of the Constitution of India seeking following reliefs:

- i. Admit the petition,
- ii. Call for the records from the custody of the respondents;
- iii. As to why a Writ of Certiorari and/or in the nature thereof shall not be issued for commanding/ directing the respondent Nos. 2 to quash the impugned Order vide No. F.10(874)DHE/LA/2023/1417(02) dated 21.05.2024.
- iv As to why a writ of Mandamus and/or in the nature thereof shall not be issued for commending/directing the respondents to designate the petitioner as Assistant Professor under the aforesaid respondents.
- v. As to why a writ of Mandamus and/or in the nature thereof shall not be issued for commending/directing the respondents to fix the appropriate pay scale along with Academic Grade Pay (ADP) and increment for Ph.D. holders for the post of Assistant Professor as per UGC Guidelines.
- vi. After hearing the parties, be pleased to make the Rule Absolute in terms of prayer (iii), (iv) and (v) above;
- vii. Costs of an incidental to this proceeding....."

[3] The case of the petitioner in brief is that she was appointed on 01.08.2007 to the post of Senior Programmer (Computer), (Group-B Gazetted) in the Polytechnic Institute, now Tripura Institute of Technology (TIT for short), Narsingarh under the Education (Higher) Department, Government of Tripura. The petitioner obtained M. Tech degree in Computer Science and

Engineering Discipline from NIT Agartala, in the year 2014. She initially appointed as Senior Programmer (Computer) provisionally for two years against the vacant post of senior programmer of Polytechnic Institute (now TIT) in the year 2007-2008. After completion of provisional period the petitioner permanently appointed as a Senior Programmer (Computer). It is contended that as per the Recruitment Rule (RR for short) of Senior Programmer under TIT, the required qualification is B.E./B.Tech and the nature of work of the Senior Programmer (Computer) is to define, develop, test, analyze and maintain new software applications in support of the achievement of various course. But, the petitioner is rendering the duties at TIT Narsingarh under the Department of Higher Education, Government of Tripura since the day of her inception to the service like conducting Theory and Practical classes, paper setting, paper evaluation, exams/ seasonal conduction carrying out the responsibility of lab in-charge, maintaining MIS software for TIT and many other basic academic duties that any regular faculty (Assistant Professor) carry out throughout a season.

[4] According to the petitioner, she has performed the duty and responsibility which is similar to the post of assistant professor. As such, she cannot be deprived of the right of equal pay for equal work. The petitioner has submitted several representations before the Respondent No. 3 for absorption of the post of Assistant Professor but the Department did not reply to those

representations. Thereafter, being aggrieved, the petitioner filed a writ petition, before this Court, vide WP(C) No. 556 of 2023 and this Court, on 01.09.2023, passed a Judgment and Order in WP(C) 556/2023 directing the respondents to consider the representations dated 14.11.2022, 13.03.2023 and 29.05.2023 of the petitioner. Thereafter, the petitioner on 06.09.2023, submitted a fresh representation intimating the Judgment and Order dated 01.09.2023 and the respondent No. 2 forwarded the said representation to the respondent No.3. The respondent No.3 has passed an order vide No. F.10(874)DHE/LA/2023/1417(02) dated 21st May, 2024 in respect of the representation made by the petitioner informing that consideration for promotion/absorption of the petitioner into the post of Assistant Profession in Technical Colleges under (Higher) Department, Govt. of Tripura is regretted. Again on 22.07.2024, the petitioner submitted a representation to the respondent No.3 praying to absorb the petitioner as Assistant Professor by implementing a new scheme. But, the respondents neither give any reply to the said representation dated 22.07.2024 nor take any steps to implement a new scheme. Being aggrieved, the present writ petition is filed by the petitioner seeking the afore-quoted reliefs.

[5] Ms. S. Deb (Gupta), learned counsel for the petitioner submits that as per the RR of Senior Programmer under TIT, the required qualifications is B.E./B.Tech. The nature of work of the

Senior Programmer (Computer) is to define, develop, test, analyze and maintain new software applications in support of the achievement of various courses but, the petitioner herein, rendering the duties under TIT, Narsingarh under the Department of Higher Education, Government of Tripura, since the day of her inception to the service she has been performing duties like any regular faculty (Assistant Professor) carry out throughout the session. It is submitted on behalf of the petitioner that since, she performs the duty and responsibility which is similar to the post of Assistant Professor, under such circumstances, denial of the designation of the Assistant Professor to the petitioner along with the relevant pay scale to the post of Assistant Professor as per the UGC Guidelines is denial of the right of the petitioner of equal pay for equal work. To support her submissions, learned counsel has placed reliance on paragraph- 13 of the judgment of the Hon'ble Apex Court in ***Arindam Chattopadhyay and others v. State of West Bengal and others*** reported in **(2013) 4 SCC 152** which reads as under:

"13. Reverting to the facts of this case, we find that although the appellants were recruited as ACDPOs, the State Government transferred and posted them to work as CDPOs in ICDS Projects. If this would have been a stopgap arrangement for few months or the appellants had been given additional charge of the posts of CDPO for a fixed period, they could not have legitimately claimed salary in the scale of the higher post i.e. CDPO. However, the fact of the matter is that as on the date of filing of the original application before the Tribunal, the appellants had continuously worked as CDPOs for almost 4 years and as on the date of filing of

the writ petition, they had worked on the higher post for about 6 years. By now, they have worked as CDPOs for almost 14 years and discharged the duties of the higher post. It is neither the pleaded case of the respondents nor has any material been produced before this Court to show that the appellants have not been discharging the duties of the post of CDPO or the degree of their responsibility is different from other CDPOs. Rather, they have tacitly admitted that the appellants are working as full-fledged CDPOs since July 1999. Therefore, there is no legal or other justification for denying them salary and allowances of the post of CDPO on the pretext that they have not been promoted in accordance with the Rules. The convening of the Promotion Committee or taking other steps for filling up the post of CDPO by promotion is not in the control of the appellants. Therefore, they cannot be penalised for the Government's failure to undertake the exercise of making regular promotions."

[6] Ms. Deb (Gupta), learned counsel for the petitioner further contends that on 21.09.2022, a Notification vide No. F. 1(716)DHE/Estt(G)/2022/2728 has been issued by the concerned authorities in compliance of the Judgment, dated 16.03.2021 arising upon W.A. No. 201 to 205 of 2021 in WP(C) 1391 to 1395 of 2019, passed by this Court. Accordingly, the Department has framed the scheme, on 21.09.2022, to designate Post Graduate Teachers (PGTs) working in Higher Education Institutes for absorbing in the post of Assistant Professor. She, therefore, urges this Court to direct the respondents to designate the petitioner as Assistant Professor under them setting aside the impugned order dated 21.05.2024 passed by the respondent.

[7] On the contrary, Mr. Kohinoor N. Bhattacharya, learned G.A. opposes the submissions made on behalf of the petitioner. He contends that the petitioner was appointed as Senior Programmer in the discipline of Computer Science and Engineering in Tripura Institute of Technology, Narsingarh (erstwhile Polytechnic Institute) as per Recruitment Rules (RRs) N.F.1(10-18)-DHE/94 dated 27.02.1996 and as per existing RR's, there is no scope for promotion into the post of Assistant Professor under the Department. The attribute of the post of Senior Programmer is principally limited to demonstrating the computer programmes in Laboratories at Technical Institution, besides others assignments entrusted by the Principal from time to time. The petitioner willingly accepted the Offer & Appointment vide Memo. No.F.1(674)-DHE/Estt(G)/2006 dated 10.07.2007, including the terms and conditions vide no.2(iii) as "Others conditions of service will be governed by the relevant rules and orders in force from time to time" and accordingly, she had joined the post of Senior Programmer on 01.08.2007. Thus, her service will be governed by recruitment rules.

[8] It is further contended that the post of Asst. Professor in Tripura Institute of Technology (TIT) is a direct recruitment post to be appointed through competitive selection process by the Public Service Commission. There is no scope for the Senior Programmer of TIT to be upgraded to the post of Asst. Professor and the submission made on behalf of the petitioner is contrary to the

guidelines framed by the All India Council for Technical Education (AICTE) and the same cannot be considered by the State respondents. To support his contention, learned G.A. has placed reliance on the following judgments of the Hon'ble Apex Court:

1. *Union of India v. Indian Navy Civilian Design Officers Association and another* reported in **2023 SCC OnLine SC 173.**

2. *Order dated 29th August, 2024*, passed in *Shri Metongmeren AO, (IAS Retd.) v. The State of Nagaland*, case No. Civil Appeal No. 10034 of 2011.

[9] Mr. Bhattacharya, learned G.A. also submits that under the Higher Education Department the eligible PGTs who are in regular service and fulfils the eligible criteria for the post of Assistant Professor are only absorbed in pursuant to the direction of this Court passed in WA No. 201 to 205 in W.P(C) No. 1391 to 1395 of 2019 as per the scheme vide notification dated 21.09.2022 and the same is specifically meant for the PGTs working in the Govt. (General) Degree College and accordingly, the said scheme is not applicable for the post of senior programmer. He, therefore, urges this Court to dismiss the instant petition filed by the petitioner.

[10] Heard the submissions made at the Bar. Perused the material evidence on record. Counter-affidavit has also been filed on behalf of the respondents.

[11] It is seen from record that on 06.09.2023, the petitioner has submitted a representation alongwith the judgment and order

of this Court dated 01.09.2023 passed in WP(C) 556 of 2023 and subsequently, the concerned respondent has passed the impugned order dated 21.05.2024 in the following manner:

".....WHEREAS, Smt. Purabi Debbarma, Senior Programmer in the discipline of Computer Science and Engineering in Tripura Institute of Technology, Narsingarh (erstwhile Polytechnic Institute) was recruited under Recruitment Rules N.F 1(10-18)-DHE/94 dated 27.02.1996 and as per existing RRs, there is no scope to attain promotion into the post of Assistant Professor under the Department. The attribute of the post of Senior Programmer principally limited to demonstrating the computer programmes in Laboratories at Technical Institution, besides others assignments entrusted by the principal from time to time:

AND

WHEREAS, the petitioner willingly accepted the Offer & Appointment vide Memo.No.F.1(674)-DHE/Estt(G)/2006 dated 10.07.2007 with a terms and conditions vide no.2(iii) as "Others conditions of service will be governed by the relevant rules and orders in force from time to time" and accordingly, she had joined to the post of Senior Programmer on 01.08.2007;thus, her service will be in force as per aforesaid recruitment rules,

AND

WHEREAS, the petitioner may possess academic qualification for the Post of Assistant Professor, but, without going through a specific selection process as prescribed in the Recruitment Rules of Assistant Professor for Technical Colleges, adopted by the Govt. of Tripura, in line with AICTE Regulation's 2019, through Public Service Commission, cannot be appointed to the Post of Assistant Professor in Technical Colleges as this is direct entry post.

AND

WHEREAS, the scheme notified vide No.F.1(716) DHE/Estt(G)/2022 dated 21.09.2022 in compliance of interim order passed on 16.03.2021 arising upon W.A No.201-205 of 2021 in W.P(C) No.1391 to 1395 was framed for absorbing Post Graduate Teachers (PGTs) into the scale of pay of Assistant Professor who are imparting teaching learning process in the General Degree Colleges considering the terms and conditions of the said scheme only meant for PGTs working under Govt. General Degree Colleges;

NOW, THEREFORE, after proper examination of the representations of Smt. Purabi Debbarma following recruitment rules of the post of the Assistant Professor framed as per the AICTE norms, this department hereby regrets for considering promotion/absorption into the post of Assistant Professor in Technical Colleges under Education (Higher) Department. Govt. of Tripura. This speaking order is issued in compliance to the order dated 01.09.2023 passed by the Hon'ble High Court in W.P(C) No.556/2023."

[12] Admittedly, it seen from record that the petitioner was appointed as Senior Programmer in the discipline of Computer Science and Engineering in Tripura Institute of Technology, Narsingarh (erstwhile Polytechnic Institute) as per Recruitment Rules (RRs) and as per the existing RR, there is no scope to attain promotion/absorption into the post of Assistant Professor without proper selection process through Public Service Commission following Recruitment Rules of Assistant Professor of Technical Institute under AICTE. 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 advertizing 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.

10. In State of U.P. v J.P. Chaurasia, while answering the questions as to whether the Bench Secretaries in the High Court of Allahabad were entitled to pay scale admissible to the Section Officers and whether the creation of two grades with different scales in the cadre of Bench Secretaries who were doing the same and similar work was violative of the right to have "equal pay for equal work" This Court observed as under:-

"18. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often

functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."*****

15. 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."

[13] 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 of Technical Institute under AICTE, no direction can be imposed upon the respondents for promotion/absorption of the petitioner into the post of Assistant Professor. It is also opined that the judgments as referred by the learned counsel for the petitioner is not applicable to the facts and circumstances of the present case. Hence, the present writ petition filed by the petitioner is dismissed and the impugned order dated 21.05.2024 is hereby upheld.

[14] 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.

T. AMARNATH GOUD, J

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