

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)No.1077 of 2022

Smt. Pratima Debbarma,
Wife of Sri Bakul Sarkar,
Resident of village: Brahmachara,
P.O. Brahmachara, P.S. Teliamura,
District: Khowai Tripura,
PIN:799 205, aged about 41 years

----**Petitioner (s)**

Versus

- 1. The State of Tripura ,**
represented by the Commissioner & Secretary,
Education Department, Government of Tripura,
Having his office at Secretariat Building,
P.O. Kunjaban, P.S. New Capital Complex,
District: West Tripura, PIN:799 006
- 2. The Commissioner & Secretary,**
Education Department, Government of Tripura,
Having his office at Secretariat Building,
P.O. Kunjaban, PS New Capital Complex,
District: West Tripura, PIN:799 006
- 3. The Commissioner & Secretary,**
Finance Department, Govt. of Tripura,
Having his office at Secretariat Building,
P.O. Kunjaban, PS New Capital Complex,
District: West Tripura, PIN:799 006
- 4. The Director of School Education,**
Education Department, Government of Tripura,
Having his office at Shiksha Bhavan,
Office Lane, P.O. Agartala, PS West Agartala,
District: West Tripura

---- **Respondents (s)**

For Petitioner(s)	:	Mr. Somik Deb, Sr. Adv. Ms. Janhavi Mahana, Adv.
For Respondent(s)	:	Mr. Rana Gopal Chakraborty, Adv.
Date of Hearing	:	11.04.2025
Date of delivery of Judgment and Order	:	25.04.2025
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

By means of filing this writ petition the petitioner has prayed for 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 directing them, to transmit the records, appertaining to this writ petition, lying with them, for rendering substantive and conscionable justice to the petitioner, and for quashing/setting aside the impugned Offer of Appointment (Annexure-5 supra) insofar as it grants a fixed monthly pay to the petitioner, and negating the seniority of the past service, rendered by her, regular pay scale, pay protection, i.e., counting the past service for the purpose of fixation of pay, leave encashment, leave salary, gratuity and all other admissible benefits.

(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 Offer of Appointment (Annexure-5 supra), and

thereupon, reckon the past service, rendered by the petitioner, while determining the seniority, regular pay scale, pay protection, i.e., counting the past service for the purpose of fixation of pay, leave encashment, leave salary, gratuity and all other admissible service benefits, including pension, as well as the arrears of salary and allowances, in conformity with the directions, contained in the Judgment & Order dated 07.05.2014 with the directions, contained in the Judgment & Order dated 07.05.2014 (referred to supra), as affirmed, vide the Judgment & Order dated 23.03.2017 (referred to supra) as well as the Judgment & Order dated 29.01.2020 (referred to supra);

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

(iv) Make the rules absolute.

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

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

02. Heard Learned Senior Counsel Mr. Somik Deb assisted by Ms. Janhavi Mahana, Learned counsel appearing on behalf of the petitioner and also heard Mr. Rana Gopal

Chakraborty, Learned Counsel appearing on behalf of the State-respondents.

03. At the time of hearing Learned Senior Counsel Mr. Deb appearing on behalf of the petitioner first of all drawn the attention of the court referring the memorandum dated 15.07.2010 i.e. offer of appointment of the petitioner as a Post Graduate Teacher (Annexure-1) and submitted that by the said memorandum the petitioner was given the offer of appointment for the post of Post Graduate Teacher under Education Department, Govt. of Tripura on fixed pay basis and accordingly the petitioner joined to the said post and in this regard one memo dated 29.03.2011 (Annexure-2 to this writ petition) was issued by the School Education Department, Government of Tripura. After that as the appointment of the present petitioner and others were challenged before the Division Bench of this High Court and ultimately by the memorandum dated 23.12.2017 of Directorate of Secondary Education, Government of Tripura in pursuance of the order of the Hon'ble Supreme Court of India the period of extension of service of terminated teachers were extended till 01.01.2018. Thereafter their period of extension of service as Ad-hoc Teachers were extended and terminated with effect from 31.03.2020 (afternoon)(Annexure-4 of this writ petition). After that the present petitioner further applied for fresh selection process as a Graduate Teacher, so on the recommendation of the Teachers Recruitment Board dated 11.02.2022 the present

petitioner was appointed as a Graduate Teacher under School Education Department, Govt. of Tripura on fixed pay basis (Annexure-5 memo dated 18.04.2022). Thereafter, few teachers who were terminated filed a case for reckon the past service rendered by those petitioners while determining their seniority, regular pay scale, pay protection, i.e., counting the past services for the purpose of fixation of pay, leave encashment, leave salary, gratuity and all other admissible service benefits including pension as well as the arrears of salary and allowances in conformity with the directions, contained in the judgment and order dated 07.05.2024, 23.03.2017 and 29.01.2020 and according to Learned Senior Counsel Hon'ble the Division Bench of this High Court at the time of disposal of WP(C)435 of 2018 in para No.3 discussed about the judgment dated 07.05.2024 titled as **Tanmoy Nath and Ors. vs. State of Tripura and Ors.** reported in **(2014)2 TLR 731** wherein in the said judgment in para No.125 Hon'ble the Division Bench observed as under:

"125. We would also like to make it clear that other than the benefits indicated by us above there can be no reservation/preference on the basis of age. There shall be no preference to dependent government servants or retired government employee or retrenched employees etc. There can be no reservation for linguistic or religious minorities or on area wise basis. It is further made clear that if the persons who are selected in the previous selection are again selected then the service rendered by them earlier shall be counted for the purpose of seniority, pension and all other purposes."

Further in para No.5,6,7,8 and 9 of the said judgment dated 21.01.2019 in WP(C)No.435 of 2018 the Division Bench of this High Court further observed as under:

"5. It is not in dispute that insofar as para 125 reproduced (supra), with emphasis is concerned, has attained finality.

The State is bound to comply with the same.

To our reading, if any one of the already selected candidates are again selected in terms of the fresh selection process, then their earlier services so rendered by them has to be counted for the benefit of seniority, pension and all other purposes.

6. Before us, it is not in dispute that the present writ petitioners, pursuant to the directions issued by this Court reproduced(supra) had participated in the fresh selection process so undertaken by the Government. It is also not in dispute that they stand selected, in accordance with law. Also letters of appointment stand issued, which they accepted and the petitioners posted with their joining at the appropriate places of posting. Their selection and appointment is to the very same post to which they earlier stood selected and appointed.

7. It is the petitioners' grievance that notwithstanding the directions issued by this Court, unambiguous in nature, the State Government, in utter disregard, rather in contempt, have issued fresh letters of appointment, completely ignoring the past services so rendered by them and treating their service as a fresh from the date of their selection so undertaken pursuant to and in terms of fresh selection process.

8. Well, to our mind, this exercise undertaken by the Government is not in the spirit, rather in utter disregard of the directions issued by this Court. The directions as we have already expressed are unambiguously clear. Past service rendered by a candidate, who was selected and had discharged his/her duties had to be counted for the purposes of seniority, pension and all other benefits. Candidates stood selected to the very same post.

9. As such, in our considered view, the writ petition needs to be allowed with a direction to the State to treat the past service of each one of the petitioner(s), so rendered in relation to the earlier selection process, for the purposes of seniority, pension and all other benefits. All consequential action shall positively be undertaken by the State within a period of 3(three) months. Equally, monetary benefits, if any, shall be disbursed within the aforesaid period."

According to Learned Senior Counsel the said judgment attained finality as the respondent-authority did not challenge the said judgment delivered by the Division Bench of this High Court.

04. Learned Senior Counsel further referred another judgment delivered by the then Hon'ble the Chief Justice of High Court of Tripura in connection with WP(C)No.295 of 2019, WP(C)354 of 2019, WP(C)355 of 2019, WP(C)1012 of 2019, WP(C)296 of 2019, WP(C)677 of 2019, WP(C)1013 of

2019, WP(C)1014 of 2019, WP(C)1155 of 2019, WP(C)1156 of 2019, WP(C)1157 of 2019, WP(C)1158 of 2019, WP(C)1159 of 2019, WP(C)1160 of 2019, WP(C)1161 of 2019, WP(C)1162 of 2019, WP(C)1043 of 2019, WP(C)1062 of 2019, WP(C)1070 of 2019, WP(C)1071 of 2019, WP(C)1072 of 2019, WP(C)1260 of 2019, WP(C)1099 of 2019, WP(C)1210 of 2019, WP(C)1211 of 2019, WP(C)1215 of 2019, WP(C)1234 of 2019, WP(C)1235 of 2019, WP(C)1237, of 2019 WP(C)1238 of 2019, WP(C)1280 of 2019, WP(C)1281 of 2019, WP(C)1283 of 2019, WP(C)1284 of 2019 and WP(C)1303 of 2019 dated 29.01.2020 wherein in para Nos.7, 8, 9 and 10 this High Court made some clarification mentioning three categories of persons who are entitled to be admissible benefits in view of para-125 of the judgment of **Tanmoy Nath** (supra). According to Learned Senior Counsel Mr. Deb the said judgment of the Hon'ble Chief Justice delivered in the aforesaid cases was also not challenged by the State authority resulting which the same also attained finality and those petitioners were given benefits of past service (Annexure-7 to this petition).

05. Learned Senior Counsel again argued that by the said judgment of the Coordinate Bench i.e. the then Hon'ble Chief Justice of this High Court dated 29.01.2020 in the aforesaid batch matters of cases in para 30(iii) the following observation was made by the High Court:

“(iii) In Category-III cases, the petitioners’ past service would be counted for the limited purpose of retaining their leave credit, provident fund, pension and gratuity and further that they will be placed in the regular scale of pay from the date of their fresh appointment and the pay

will be fixed at the minimum of the scale. They would receive all admissible allowances."

Learned Senior Counsel also submitted that regarding granting benefits in respect of past service for category (III) cases, the case of the present petitioner covers. The said judgment also has not been challenged by the respondent authority, thus it has also attained finality.

06. Learned Senior Counsel further submitted that thereafter few persons as petitioners filed cases before this High Court bearing No. WP(C)901 of 2021, WP(C)902 of 2021, WP(C)903 of 2021, WP(C)904 of 2021, WP(C)962 of 2021, WP(C)963 of 2021, WP(C)964 of 2021, WP(C)965 of 2021 and WP(C)17 of 2022 seeking certain reliefs for covering the gap i.e. the teachers who were terminated on 31.03.2020 and before that date and got selected for some other posts or who were later on applied for the post of Graduate Teachers and appointed later on after 31.03.2020. It was further submitted by Learned Senior Counsel that after the termination of employment as per memo dated 31.03.2020 (Annexure-4) the present petitioner was out of employment for certain period. Although he applied for the post of Graduate Teacher under TRBT and later on vide memo dated 18.04.2022 (Annexure-5) she was again given the offer of appointment to the post of Graduate Teacher as already stated. So there was a gap on and from 01.04.2020 to 17.04.2022 because during that period she rendered no service under the department and in this regard a Coordinate Bench of this High Court by a judgment dated

20.05.2022 (Annexure-8 to this petition) in the aforesaid cases in para No.11 made the following observation for regularization of the non-working period with effect from 01.04.2020:

"[11] In the circumstances, this court is persuaded to direct the respondents to regularise the gap commencing from 01.04.2020 till the date of joining of each of the writ petitioners by deeming them to be in service and the non-working period meaning the gap period be regularised by granting admissible non-paid leave [EOL]. So far the other benefits are concerned, that shall be released in favour of the petitioners in terms of the directions in Sangita Reang (supra), as reproduced above, finding out their relevant categories."

According to Learned Senior Counsel the State authority also has not challenged the said judgment. Thus the same judgment has also attained finality. Learned Senior Counsel further submitted that although the writ petitioner annexed a judgment passed in connection with Case No.WP(C)No.10 of 2022 (Annexure-9 to this petition) but submitted that he is not relying upon the said judgment for decision of this writ petition. Finally Learned Senior Counsel appearing on behalf of the petitioner urged for granting the past service benefit rendered by the petitioner as a Post Graduate Teacher.

07. The State-respondents have filed their counter-affidavit denying the assertions made by the petitioner in her writ petition but in para No.10 of the counter-affidavit the State-respondents took the following plea:

"10. That, with regard to paragraphs-2.20 of the writ petition, I say that the writ petition WP(C)No.295/2019 is concerned to those teachers who were appointed as Graduate Teacher & Post Graduate Teachers in 2010 and Under Graduate Teachers in 2014 and terminated on 31.12.2017 and thereafter joined on ad-hoc basis and during their ad-hoc service selected/joined afresh to the post of Under Graduate Teachers/Graduate Teacher/Post Graduate Teachers prior to 31.03.2020. All the eligible

candidates allowed the benefits of past service in pursuant to the Judgment and Order dated 29.01.2020 passed in W.P.(C)295/2019.

The petitioner of the instant writ petition was terminated on 31.03.2020 from her ad-hoc service and while the petitioner applied for the post of Graduate Teacher and joined the post of Graduate Teacher in 2022, she was not in service. Hence the claim of the petitioners for extension of the benefit of past service in the light of the Judgment and Order dated 29.01.2020 passed in WP(C)295/2019 is not justified."

08. In course of hearing of argument Learned Counsel appearing for the state-respondents Mr. R. G. Chakraborty submitted that on similar issues so many cases were filed before the Single Bench ultimately those cases went up to appellate forum. But he sought for time to obtain some instructions and accordingly time was granted and he placed some inputs before the court. He annexed one judgment of the Division Bench of this High Court in connection with Case No.WA No.304 of 2021, WA No.162 of 2022, WA No.163 of 2022, WA No.164 of 2022, WA No.165 of 2022, WA No.166 of 2022, WA No.167 of 2022, WA No.172 of 2022, WA No.173 of 2022, WA No.176 of 2022, WA No.25 of 2023, WA No.68 of 2023, WA No.69 of 2023, WA No.92 of 2023 and WP(C)No.625 of 2023 and submitted that in the said judgment in para Nos.15-18 the Division Bench of this High Court made the following observations:

"[15] As noted above, the distinction which is sought to be drawn in the present batch of writ petitions/appeals is on the ground that the writ petitioners herein were re-employed after their services came to an end on 31st March, 2020. It is, however, not in dispute that the writ petitioners had participated in the fresh selection exercise which was initiated by the State Government prior to 31st March, 2020 and possibly the selection process was over but the offer of appointments were made after 31st March, 2020. In the case of Ajoy Debbarma (supra), the apex court at Para-18

of the judgment made an observation which is profitably quoted hereunder:

"18. In our view, considering the fact that the very selection and appointments were found to be illegal and invalid, no other advantage can be conferred upon the candidates concerned. It must be noted that the attempt on the part of the State in offering certain alternate employment is not to degrade the teachers but some solace is being offered even in cases where the candidates do not succeed in the selections to the posts of teachers. The candidates, if they are otherwise competent and eligible, will certainly have every opportunity till 31.03.2023 to get selected for the posts of teachers in the State and by way of additional benefit those who are unsuccessful in such attempts may retain the alternate employment. In our view, it does not amount to any degradation." [16] The Apex Court taking note of the fact that the fresh selection exercise may entail sometime made it clear that the candidates who were one of those 10323 teachers and whose services were terminated will have opportunity till 31st March, 2023 to get selected for the post of teachers in the State if they are otherwise competent and eligible."

[17] The important rider for availing of such benefit as also observed in the case of Sangita Reang & others (supra) are twofold (i) that these candidates had continued in employment after 31st December, 2017 on adhoc extensions till 31st March, 2020 and (ii) they had applied before the competent authority for participating in the fresh selection exercise. This Court is not required to enter into the scrutiny of claims of individual writ petitioners in these present batch of cases. The cases of individual writ petitioners would be examined by the competent authority under the Government of Tripura in the light of the principles discussed hereinabove. However, if individual writ petitioners satisfy the conditions prescribed hereinabove and also laid down in the case of Sangita Reang & others (supra), they would be entitled to the benefit of past service devised by the learned Court in the case of Sangita Reang & others (supra) depending upon which of the three categories they fall.

[18] Having held so, this Court deems it proper to direct the competent authority under the department to scrutinize the case of individual writ petitioners in the light of the principles laid down hereinabove and take a decision within a period of 3[three] months from the date of receipt of the copy of this judgment. Needless to say that the consequential benefits, if any, arising out of such decision shall flow in favour of the individual writ petitioners who satisfy the conditions prescribed hereinabove."

Referring the same he further submitted that similar direction like above may be given to the State-authority to consider the grievance of the present petitioner in letter and spirit.

09. On the other hand, Learned Senior Counsel Mr. Deb succinctly submitted that the state-respondent is also not in a position to express their views case to case basis and although the State has preferred SLP challenging some of the judgments before the Hon'ble Supreme Court but there was no stay order or any other order delivered by the Hon'ble Apex Court to stay operation of those judgments. However, he fairly submitted that for the sake of justice a similar direction may be given to the state-respondents to consider her case so that her grievances can be resolved by the respondents-authority which Learned Counsel for the state-respondents also agreed upon. So after hearing both the sides, this instant writ petition stands disposed of with a direction to the state-respondents/authority/department to consider of the case of the present petitioner within a period of three months from the date of passing of the judgment/order and the petitioner of this case be asked to submit a representation to the respective department for consideration of her grievances in the light of the judgment delivered by this court today within 15 (fifteen) days from the date of receipt of the copy of this judgment.

A copy of this judgment accordingly be furnished to Learned Senior Counsel for the petitioner for information and necessary action free of cost.

With this observation and direction, this writ petition stands allowed and disposed of.

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

JUDGE



**MOUMITA
DATTA**

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