

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.13 of 2026

Dr. Sumana Majumdar, age 53 years, W/O Sri Dipak Chandra Lodh, R/O-near SDPO Office, Dak Banglow Road, P.O and P.S. - R.K. Pur, District- Gomati Tripura, PIN-799120

.....Appellant(s);

Versus

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

.....Respondent(s)

For Appellant(s) : Mr. Purusuttam Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate.

For Respondent(s) : Mr. Saktimoy Chakraborti, Advocate General,
Mr. Kohinoor Narayan Bhattacharyya, G.A.,
Mrs. Pinki Chakraborty, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Date of hearing : **12.02.2026 & 05.03.2026**

Date of Judgment & Order : **05.03.2026**

Whether Fit for Reporting : **YES**

JUDGMENT & ORDER (ORAL)

(M.S. Ramachandra Rao, C.J.)

1. Heard Mr. Purusuttam Roy Barman, learned Senior Counsel assisted by learned counsel Mr. Samarjit Bhattacharjee and learned counsel Mr. Kawsik Nath appearing for the appellant, and Mr. Saktimoy Chakraborti, learned Advocate General assisted by learned counsel Mrs. Pinki Chakraborty for the respondents-State.

2. This Writ Appeal is preferred by the appellant challenging the judgment dt.08.12.2025 of the learned Single Judge in WP(C) No.140/2025.

3. Appellant was appointed as a Post Graduate Teacher (PGT) pursuant to a memo dt.10.06.2010 issued by the Special Secretary and Director of Higher Education, Tripura.

The Judgment dt.16.03.2021 in WP(C) No.1391/2019 and batch

4. Other PGTs, who were similarly situated like the appellant, and who also possess, like her, the qualifications required for the post of Assistant Professor as per UGC guidelines, approached this Court in WP(C) No.1391/2019 and batch.

5. The learned Single Judge allowed the Writ Petition by a judgment dt.16.03.2021 holding that the petitioners in that Writ Petition, had all the qualifications for appointment to the post of Assistant Professor in colleges, and they cannot be deprived of equal pay attached to the post of Assistant Professor, and a direction was given to the respondents to fix the pay of the said petitioners in the pay scale of Rs.15,600-39,100/- with AGP of Rs.6000/- (pre-revised).

6. A direction was also given to frame a scheme within a period of six months to absorb or designate the petitioners in the said Writ Petition in the post of Assistant Professor by considering their long tenure of service of teaching in the general degree colleges, as there was no blemish in respect of their competence by relaxing the maximum age.

7. While deciding as above, learned Single Judge did not accept the plea of the State Government that PGTs are not the feeder post for promotion to post of Assistant Professor, and so there is no question of upgradation or

promotion from PGTs to post of Assistant professor. He also did not accept the plea of UGC that in respect of designating the PGTs as Assistant Professors, there is no provision contained in the UGC regulations.

WA No.201/2021 and batch

8. Thereafter, the State Government preferred WA No.201/2021 and batch before the Division Bench.

9. In the Writ Appeals, the State Government contended that the appointment of Post Graduate Teachers was made on the basis of Recruitment Rules of Post Graduate Teachers under the School Education Department, which is not at par with the Recruitment Rules of Assistant Professor under UGC; that the respondents in the Writ Appeals have not challenged the Recruitment Rules at the time of joining into service and that there is no rule, policy for promotion to the post of Assistant Professor directly from the post of Post Graduate Teacher under UGC guidelines.

The Interim Order dt.14.12.2021 of the Division Bench in W.A. No.201/2021 and batch

10. Notwithstanding the said plea taken by the State Government, on 14.12.2021, as an interim measure, while admitting the Writ Appeals, the Division Bench held that the State Government was obliged, during the pendency of the Writ Appeals, to comply with the direction of framing of scheme within a period of six months to absorb or designate the petitioners therein in the post of Assistant Professor. It however granted a stay of operation of the directions contained in the judgment of the learned Single Judge only with regard to fixation of pay.

11. If the State Government had any legal objection to this direction to frame the scheme, it should have challenged this interim direction in the Supreme Court, or sought its vacation by the same Division Bench. It however did not do so.

12. It *consciously* and *deliberately* acquiesced to the said direction, and issued a notification on 21.09.2022 styling it as a “Scheme to designate PGTs working under the Department of Higher Education, Government of Tripura by absorbing them in the post of Assistant Professor” mentioning therein that the scheme was being introduced because of the interim order granted on 14.12.2021 in WA No.201/2021 and batch.

13. On 15.10.2022, the State Government issued a Memorandum designating the respondents in W.A.No.201/2021 and batch as Assistant Professors by way of absorption in available vacant posts. The State Government thus gave the benefit to the 5 respondents in the said Writ Appeals – the benefit of absorption to the post of Assistant Professor from PGT post, though this was not, according to the State Government, in accordance with the applicable Rules.

The final Judgment dt.17.05.2023 in WA No.201/2021 and batch

14. When the Writ Appeals were finally heard by the Division Bench, and decided on 17.05.2023, the State Government’s Counsel informed the Court that they had introduced the above scheme vide notification dt.21.09.2022 as was directed by the learned Single Judge for absorption of PGTs in the post of Assistant Professors. He confined his arguments in the Writ Appeal only as regards the direction given by the learned Single Judge in WP(C) No.1391/2019 and batch regarding fixation of pay scale. The Division

Bench set aside the said direction to fix pay scale only, and granted relief to the State Government only to that extent.

15. Had the State Government felt that the interim direction was legally unsustainable, it could have declined to frame the scheme itself or at least argued, when the matter was being finally heard and decided, that the direction of the Single Judge in his final judgment and of the Division Bench in its interim order, cannot be sustained. This is also in our opinion a deliberate and conscious act on the part of the State Government.

16. As recorded by the Division Bench in its order dt.17.05.2023 in WA No.201/2021 and batch, the State Government had indeed issued a notification on 21.09.2022 styling it as a scheme to designate PGTs working under the Department of Higher Education, Government of Tripura by absorbing them in the post of Assistant Professor mentioning therein that the scheme was being introduced because of the interim order granted on 14.12.2021 in WA No.201/2021 and batch.

WP(C) No.254/2021 and batch and Judgment dt.28.11.2022 therein

17. Seeking similar benefit, 19 other persons similarly situated to that of the respondents in the said Writ Appeals referred to supra, filed other Writ Petitions being WP(C) No.254/2021 and batch.

18. On 28.11.2022, the learned Single Judge allowed the Writ Petitions, and gave a direction to the respondents to consider absorption of the petitioners in WP(C) No.254/2021 and batch against available vacancies, and to designate them as Assistant Professors in accordance with the scheme, if they are found eligible. The learned Single Judge granted four weeks' time to complete the said exercise.

WP(C) No.276/2022 and Judgment dt.06.12.2022 therein

19. Since the appellant herein was also denied the said benefit of absorption as Assistant Professor, though she stood on the similar footing like that of the persons who were absorbed on 15.10.2022 pursuant to the order dt.16.03.2021 in WP(C) No.1391/2019 and batch, the appellant filed WP(C) No.276/2022 seeking the same benefit.

20. The learned Single Judge, on 06.12.2022, allowed the said Writ Petition, and directed the respondents to consider the case of the appellant for absorption and designation as Assistant Professor in accordance with the scheme subject to availability of vacant post, and granted six weeks' time to do so.

21. The appellant thereafter submitted a representation on 13.12.2022 to the Director, Directorate of Higher Education, Government of Tripura, Agartala.

WP(C) No.272/2023 and Judgment dt.19.03.2024 therein

22. The State Government then issued Memorandum dt.05.01.2023 designating 16 of the 19 petitioners in WP(C) No.254/2021 and batch as Assistant professors, against available vacancies, but appellant and 3 others were left out. The appellant therefore filed WP(C) No.272/2023.

23. The said Writ Petition was also allowed by the learned Single Judge on 19.03.2024, and a direction was issued to the respondents to consider the grievance of the appellant at the earliest keeping in view the spirit of the order dt.06.12.2022 in WP(C) No.276/2022. The learned Single Judge also referred to a communication dt.05.01.2023 of the Additional Secretary to the Government of Tripura that eligible PGTs of different subjects will be

accommodated as per the availability of category wise posts by the Higher Education Department in future, following the direction of the High Court.

24. No plea was raised by appellants-State Government that the previous orders passed by the Court, cannot be applied to the appellant, or that such absorption is not permitted by Recruitment Rules.

The order dt.20.01.2025 and memorandum dt.13.02.2025 issued by the respondents

25. Thereafter on 20.01.2025, the respondents issued an order stating that the absorption of appellant and others cannot be done as there exists no vacant post in respective subject and category-wise in the Higher Education Department.

26. They went further and also issued a Memorandum on 13.02.2025 withdrawing the scheme notified on 21.09.2022. In this memorandum it was stated that the scheme had been implemented for absorption of the PGTs into the post of Assistant Professor as one time arrangement in order to comply with particular cases following the direction of the High Court of Tripura, and since the said order of the High Court had been complied with, the scheme is being withdrawn.

WP(C) No.140/2025 and Impugned Judgment dt.08.12.2025 passed therein

27. Challenging the same, the appellant has filed WP(C) No.140/2025 before this Court.

28. The learned Single Judge however dismissed the Writ Petition by his judgment dt.08.12.2025.

29. In the said Judgment, the learned Single Judge noted that there was a vacancy which would arise on account of the retirement of Dr. Arpita

Acharyya on 31.12.2025, but he refused to grant relief to the appellant. He held that there was no scope to absorb into the post of Assistant Professor without proper selection process through Public Service Commission following Recruitment Rules of Assistant Professor.

30. He also held that under Art.226 of the Constitution of India, the High Court cannot direct the State Government to frame any scheme, since it is a welfare State, and framing any scheme is completely under the domain of the State; and that though the respondents had not challenged the direction given for framing of the scheme at that point of time, still the appellant cannot rely upon the order passed on 16.03.2021 in WP(C) No.1391/2019 and batch, which was *per incuriam*.

31. Assailing the same, this Writ Appeal is filed.

Consideration by the Court:

32. From the narration of the facts mentioned above, it is clear that though as per the Recruitment Rules, there was no scope to absorb PGTs into the post of Assistant Professor without proper selection process through Public Service Commission, the High Court in WP(C) No.1391/2019 and batch on 16.03.2021, had directed the respondents to frame a scheme to absorb the PGTs as Assistant Professors. As stated supra, the learned Single Judge did not accept the plea of the State Government that PGTs are not the feeder post for promotion to post of Assistant Professor, and so there is no question of upgradation or promotion from PGTs to the post of Assistant professor. He also did not accept the plea of UGC that in respect of designating the PGTs as Assistant Professors, there is no provision contained in the UGC regulations.

33. Thereafter when the State preferred Writ Appeals, there was an interim direction on 14.12.2021 in WA No.201/2021 and batch directing the framing of the scheme for absorption of PGTs rendering duty of Assistant Professors in degree colleges having qualifications made for Assistant Professors.

34. The State Government acquiesced in the said order, and did not challenge the said interim order in the Supreme Court, and also did not seek vacation of the said order by the Division Bench.

35. It instead went ahead, and notified the scheme on 21.09.2022 for absorption of the five persons who were parties in the said Writ Appeals, for absorption as Assistant Professors in degree colleges.

36. Not only did it do so, when the said Writ Appeals were finally heard and decided, it chose not to canvass before the Division Bench on 17.05.2023, the correctness of the interim direction granted by the Division Bench to frame the scheme, and only confined its submission to the other point about fixation of pay scale to the respondents therein.

37. More importantly, when other 19 persons similarly situated to the appellant, had filed WP(C) No.254/2021 and batch, and a direction was given to consider their case for absorption as Assistant Professors, and to designate them as Assistant Professors in accordance with the scheme, if they are found eligible, and absorb them against available vacancies, the State Government issued a memo on 05.01.2023 absorbing 16 such persons as Assistant Professors without demur, without challenging either by way of a Writ Appeal, or by way of an SLP the direction contained in the order dt.28.11.2022 in WP(C) No.254/2021 and batch.

38. But when it came to the case of the appellant, she was driven to file not only WP(C) No.272/2023, but also WP(C) No.140/2025, and after the appellant obtained a favourable order on 19.03.2024 in WP(C) No.272/2023, to consider her case for absorption as Assistant Professor, the respondents then on 20.01.2025, rejected her case on the ground that there was no vacant post, and on 13.02.2025 withdrew the scheme altogether.

39. It is clear that the respondents have discriminated against the appellant. After having acquiesced to the directions to frame scheme for absorption of PGTs as Assistant Professors issued on 16.03.2021 in WP(C) No.1391/2019 and batch, and the interim order dt.14.12.2021 in WA No.201/2021 and batch, the State Government had framed the scheme on 21.09.2022 and absorbed the respondents therein as Assistant Professors on 15.10.2022, also granted similar absorption on 05.01.2023 to the 16 petitioners in WP(C) No.254/2021 and batch without objecting their right to seek such absorption.

40. Only when it came to the case of the appellant, a totally new case has been pleaded before the learned Single Judge in WP(C) No.140/2025, though there was a vacancy which would be available from 31.12.2025 in the post of Assistant Professor, where the appellant could have been accommodated and absorbed as Assistant Professor.

41. The State cannot withdraw the scheme by contending that it was only one time arrangement to absorb the 5 respondents in WA.No.201/2021 and batch on 15.10.2022, because it had also absorbed at a different point of time, 16 others like the appellant on 05.01.2023. Thus it had accepted twice, even though the Recruitment Rules did not permit, the absorption of PGTs as

Assistant Professors. It had thus accepted the process of absorption of PGTs as Assistant Professors as an alternative method to fill up the vacant posts of Assistant professors. So the order dt.13.02.2025 is set aside.

42. The point whether the Court can direct the framing of the scheme of absorption of PGTs as Assistant Professors or not, not having been argued by the State Government in WP(C) No.1391/2019 and batch, or in WA No.201/2021 and batch, is presumed to have been given up by the State Government, and cannot be selectively applied, when it comes to the case of the appellant.

43. In fact such a plea does not appear to have been raised when the appellant had filed WP(C) No.276/2022 at all. Since it was not raised in that Writ Petition, the respondents are also barred by the principle of *constructive res judicata* from raising the same in WP(C) No.140/2025.

44. It is also not open to the learned Single Judge to comment on the judgment dt.16.03.2021 in WP(C) No.1391/2019 and batch, and hold the said judgment to be *per incuriam*. As held in ***State of Bihar v. Kalika Kuer alias Kalika Singh and Others***¹, an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier, but it would not be a reason to say that the decision was rendered *per incuriam* and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered *per*

¹ (2003) 5 SCC 448, at page 453

incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits.

45. We cannot lose sight of the fact that the State did not argue the correctness of judgment dt.16.03.2021 of the learned Single Judge in WP(C) No.1391/2019 as regards the direction contained therein to frame a scheme of absorption of PGTs as Assistant Professors in (i) WA No.201/2021 and batch, (ii) in WP(C) No.254/2021 and batch, and also (iii) in WP(C) No.276/2022 filed by the appellant, but had accepted and implemented it (except for the appellant).

46. The State cannot selectively allow some PGTs to get absorbed as Assistant Professors while opposing the appellant's claim for the same by raising pleas which it had not raised when other persons similar to the appellant had approached this Court.

47. Therefore, the judgment of the learned Single Judge cannot be sustained, and is accordingly set aside, and the instant Writ Appeal is allowed; the memo dt.13.02.2025 cancelling the notification dt.21.09.2022, is set aside, and the respondents are directed to absorb the appellant in the post of Assistant Professor within 8(eight) weeks.

48. Pending application(s), if any, shall stand disposed of. No costs.

(BISWAJIT PALIT, J)

(M.S. RAMACHANDRA RAO, CJ)

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