

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.66 OF 2011

1. Shri Nani Gopal Debnath,

S/O Late Ramesh Chandra Debnath,
R/O Village Jangalia,
P.O. & P.S. Bishalgarh,
District-West Tripura.

2. Shri Budhi Chandra Debbarma,

S/O Late Hari Kanta Debbarma,
R/O Village & P.O. Champaknagar,
P.S. Jirania, District-West Tripura.

3. Shri Promode Ranjan Nath,

S/O Shri Mahendra Chandra Nath,
R/O Village & P.O. Amtali,
P.S. Churaibari, District-North Tripura.

4. Shri Mangal Debbarma,

S/O Late Jayendra Debbarma of
Village Joygobindapara, P.S. Radhakishorepur,
District-South Tripura.

5. Shri Rajani Debbarma,

S/O Shri Kali Kumar Debbarma,
R/O Janmejy Nagar, Joygobindapara,
P.O. Radhapur, P.S. Jirania,
District-West Tripura.

6. Shri Narayan Chandra Banik,

S/O Late Narendra Chandra Banik,
R/O Kalibari Road, Krishnanagar,
P.O. Agartala, P.S. West Agartala,
District-West Tripura.

7. Shri Raimohan Tripura,

S/O Sheta Mohan Tripura,
R/O Village Champaknagar,
P.S. Belonia, District-South Tripura.

8. Shri Bitta Mohan Tripura,

S/O Shri Bani Chandra Tripura,
R/O Village & P.O. Chalitacharri,
P.S. Sabroom, District-South Tripura.

9. Shri Debendra Chandra Biswas,

S/O Late Atul Chandra Biswas of
Village & P.O. Gandhigram, P.S. Airport,

District-District-West Tripura.

10. Shri Chandan Chowdhury,
S/O Late Rajmohan Chowdhury,
R/O Village & P.O. Madhya Laxmibill,
P.S. Bishalgarh, District-West Tripura.

11. Shri Tarun Debbarma,
S/O Late Nitai Debbarma,
R/O Village Sankar Shyam Patipara,
P.O. Bamutia, P.S. Lefunga,
District-West Tripura.

12. Shri Ajoy Kumar Deb,
S/O Pradip Kumar Deb,
R/O Village Kalkalia,
P.O. & P.S. Sidhai,
District-West Tripura.

13. Shri Ajit Debbarma,
S/O Late Lbini Debbarma
R/O Village Durga Chowdhurypara,
P.O. R.K. Nagar, Khayerpur, P.S. East Agartala,
District-West Tripura.

14. Shri Ratan Dey,
S/O Late Shib Prasanna Dey of Melarmath,
P.O. Agartala, P.S. West Agartala,
District-West Tripura.

15. Shri Hiranjan Malakar,
S/O Late Surendra Malakar,
R/O Uttar Pabiacherra, P.O. Pabiacherra,
P.S. Kumarghat, District-North Tripura.

..... *Petitioners*

- *Vs* -

1. The State of Tripura,
Represented by the Secretary to the
Government of Tripura,
Department of Science, Technology &
Environment, New Civil Secretariat,
P.O. Kunjaban, P.S. East Agartala,
District-West Tripura.

2. The Secretary to the
Government of Tripura,
Department of Finance,
New Civil Secretariat Complex,
P.O. Kunjaban, P.S. East Agartala,

District-West Tripura.

3. The Director,

Department of Science, Technology &
Environment, P.N. Complex, Gurkhabasti,
Agartala, P.O. Kunjaban, P.S. East Agartala,
District-West Tripura.

..... *Respondents*

**BEFORE
HON'BLE MR. JUSTICE S.C. DAS**

For the petitioners : Mr. A.K. Bhowmik, Sr. Advocate
Mr. R. Dutta, Advocate

For respondents : Mr. S. Chakraborty, Addl. G.A.

Date of hearing : **02.03.2015**

Date of delivery of
judgment & order : **11.03.2015**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER

Heard learned senior counsel, Mr. A.K. Bhowmik,
assisted by learned counsel, Mr. R. Dutta for the petitioners and
learned Addl. G.A., Mr. S. Chakraborty for the respondents.

2. The petitioners *inter alia* contended that they were
appointed in the post of Helper under the Department of Science,
Technology & Environment, Government of Tripura on 22.12.1989
on a fixed pay of ₹500/- per month. They were regularized in the
pay scale of ₹800-1520/- w.e.f. 01.06.1992. On their completion of
ten years continuous and satisfactory service, they were allowed
next higher scale w.e.f. 01.06.2002, i.e. the scale of ₹2750-4925/-.

The petitioners claimed that since they were appointed on fixed pay in the year 1989 they completed ten years on 21.12.1999 and therefore were entitled to get the next higher scale (CAS) *w.e.f.* 22.12.1999 and thereby they have been deprived from the due financial benefit.

2.1. It is the further case of the petitioners that when ROP Rules, 2009 came into force the pay of the petitioners were supposed to be revised in the scale of ₹4530-13,000/-, Pay Band-1 with Grade Pay of ₹1,400/- and as per provisions of ROP Rules, after seventeen years of continuous and satisfactory service, they were entitled to 2nd ACP but the respondents by issuing Annexure-3 and Annexure-4 dated 30.10.2010 and 30.12.22010 respectively proposed the petitioners to the 2nd ACP *w.e.f.* 01.06.2009 and asked them to exercise their option within one month. The petitioners claimed that taking into account that they were appointed in the year 1989, they have completed seventeen years of service on 21.12.2006 and thereby they were entitled to the 2nd ACP *w.e.f.* 22.12.2006.

2.2. It is the contention of the petitioners that the respondents intended to deprive the petitioners from their legitimate due and therefore the petitioners did not accept the 2nd ACP *w.e.f.* 01.06.2009 and as a result they being poor employees are losing their legitimate due.

2.3. It is also contended by the petitioners that respondent No.3 further stated to them that if they exercise option as per office Orders dated 30.10.2010 and 30.12.2010 there would be some deduction from the pay of the petitioners on the ground that they have earlier overdrawn ₹100/- per month in the scale of ₹2750-4925/-. The petitioners contended that there was no lawful ground for any recovery and that they are entitled to get the CAS-I w.e.f. 22.12.1999 and 2nd ACP as per ROP Rules, 2009 w.e.f. 22.12.2006. Accordingly, the petitioners prayed for granting them the following relief:

“.....

(ii) As to why a writ in the nature of Mandamus should not be issued directing the Respondents to allow CAS-I fixing pay in the scale of Rs.2750-4925/- under the ROP Rules, 1999 to the Petitioners with effect from 22/12/1999 and 2nd ACP under the ROP Rules, 2009 with effect from 22/12/2006 in the scale of Rs.4530-13000/- Pay Band –I with grade pay of Rs.1400/- per month and annual increments in the said scale of pay since after 22/12/2006 and not to recover any amount from the salary of the Petitioners as purported overdrawn amount and to pass such other order / orders so as to give full reliefs to your Petitioners and upon causes shown to make the Rule absolute;

.....”

3. Respondents contended that the fixed pay appointment of the petitioners was purely temporary and it did not confer any

right to have regular appointment. They were regularly appointed in the pay scale of ₹800-1520/- w.e.f. 01.06.1992.

3.1. It is the case of the respondents that the Pay Rules of the Government are not applicable to the employees appointed on fixed pay basis or as DRW/Contingent workers. The Pay Rules are applicable only to the employees who are regularly appointed with regular pay scale. The post of Helper was allowed Graded Scale No.12, consisting of 3 Grades. Under Part-C(Sch-III) of the Tripura State Civil Services(ROP) Rules, 1988[for short, TSCS(ROP) Rules, 1988], the grade wise revised pay scales were—

Senior Helper : ₹950-2130/-

Helper Gr.-I : ₹800-1520/-

Helper Gr.-II : ₹775-1130/-

3.2. It is the case of the respondents that the fixed pay appointment of the petitioners were not regularized but they were appointed afresh directly on 01.06.1992 in the intermediate pay scale of ₹800-1520/- w.e.f. 01.06.1992 and that scale of ₹800-1520/- was revised to ₹2650-4350/- which should be treated as a promotion as well as CAS-I as per the provisions of TSCS(ROP) Rules, 1988 and 1999 and hence the benefits of CAS were already given to the petitioners in the highest scale of pay of Helper w.e.f. 01.06.2002 and therefore the petitioners were not entitled to any further benefit as per the existing rule and the benefits are treated to have been subsumed in CAS-2 as well.

3.3. It is also contended by the respondents that the Government has decided to allow CAS-2 to the petitioners in the pay scale of ₹2750-3925/- w.e.f. the date of completion of seven years of service in the intermediate grade as per ROP Rules, 1999 and as revised Pay Band-1(₹4530-13000/-) with grade pay of ₹1,500 as ACP-3 on completion of further eight years of service in CAS/ACP-2 and total 25 years of service and further subject to fulfillment of other conditions laid down in Rule, 10 of TSCS(ROP) Rules, 2009.

3.4. It is also contended that the petitioners were extended the benefit of ROP Rules, 2009 and they were already receiving their pay and salary as per ROP Rules, 2009 and there is no record available regarding overdrawal of ₹100/- per month in the scale of pay of ₹2750-3925/-. The claim of the petitioners cannot be considered as per the provisions of ROP Rules, 1999 and the petition is liable to be dismissed.

4. The reliefs claimed by the petitioners in the instant writ petition, as reproduced hereinbefore are very simple. They claimed that they were appointed on fixed pay basis in the year 1989 and so on their completion of ten years of service they were entitled to CAS-I w.e.f. 22.12.1999 and further on their completion of seventeen years of service they were entitled to 2nd ACP w.e.f. 22.12.2006. The stand of the respondents is that the petitioners

were appointed on fixed pay basis in the year 1989 and they were regularly appointed afresh *w.e.f.* 01.06.1992. So, the petitioners were entitled to CAS-I on their completion of ten years of service *w.e.f.* 01.06.2002 and 2nd ACP on their completion of seventeen years of service *w.e.f.* 01.06.2009. The question, therefore, arises, as to whether the period of service rendered by the petitioners on fixed pay basis should be counted or not for the purpose of CAS-I or 2nd ACP. I cannot agree with the submission of learned senior counsel, Mr. Bhowmik that the period of fixed pay service shall be counted for the purpose of CAS or ACP. The period of service on fixed pay may be counted for the retiral benefits but that period cannot be counted for the purpose of other service benefits as per rules. The petitioners failed to show any rule of such appointment on fixed pay basis. So, it is clear that they were irregularly appointed on fixed pay and their regular appointment was made only *w.e.f.* 01.06.1992 in the pay scale of ₹800-1520/-.

5. CAS or ACP are certain provision prescribed in the ROP Rules for movement from scale to scale. A person who was not in a scale of pay cannot claim a movement from scale to scale. A fixed pay employee cannot have a status of regular employee and so cannot claim the movement from scale to scale and therefore cannot claim advantage of their period of service in the fixed pay for movement from scale to scale. The claim of the petitioners therefore has no merit for consideration. The petitioners therefore are not entitled to get CAS-I *w.e.f.* 22.12.1999 and 2nd ACP *w.e.f.*

22.12.2006. The respondents rightly considered their CAS-I w.e.f. 01.06.2002 and 2nd ACP w.e.f. 01.06.2009.

6. The next claim of the petitioners is that the respondent No.3 told them that if they exercise option pursuant to office Orders dated 30.10.2010 and 30.12.2010, there would be some deductions from the pay of the petitioners on the ground that they have overdrawn ₹100/- per month in the pay scale of ₹2750-4925/-. This contention has been raised in para 7 of the writ petition. The respondents replied the contention in paras 14 of the counter affidavit wherein the respondents stated:

"14. That in regard to the statements made in Paragraph-7 of the instant writ petition it is stated by the answering respondents that the petitioners were extended that benefits of ROP Rules, 2009 and all of them are already receiving their pay and salary as per ROP Rules, 2009. And there is no record available regarding over drawal of Rs.100/- per month in the scale of pay of Rs.2750-4925/-."

In view of the above stand taken by the respondents the petitioners have nothing to apprehend that they have overdrawn ₹100/- in the pay scale of ₹2750-4925/- and that there will be recovery from their salary.

7. In view of the discussions made above, the writ petition is found to be devoid of any merit and hence it stands dismissed.

JUDGE