

**THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No. 257 of 2009

PETITIONERS :

1. Shri Sadhan Banerjee,
S/O. Late Manmohan Banerjee,
residence of Banerjee para,
Krishnanagar, P.S. East Agartala,
District-West Tripura,

2. Shri Parimal Chakraborty,
S/O. Late Annada Prasanna Chakraborty,
resident of Dhaleswar, Nutan Palli,
P.S.- Dhaleswar, District-West Tripura,

BY ADVOCATES :

Mr.P.Roy Barman,
Mr.S.Bhattacharji,

- *VS* -

RESPONDENTS :

1. The State of Tripura,
represented by the Secretary-cum-
Commissioner, Finance Department,
Government of Tripura,
Agartala.

2. Tripura Road Transport Corporation,
represented by its Managing Director,
Krishnanagar, P.S. West Agartala,
District-West Tripura,

3. The Managing Director,
Tripura Road Transport Corporation,
Krishnanagar, P.S. West Agartala,
District-West Tripura,

4. The Accounts Officer,
Tripura Road Transport Corporation,
Krishnanagar, P.S. West Agartala,
District-West Tripura,

5. Sri Runulal Chakraborty,
Upper Division Clerk,
Tripura Road Transport Corporation,
(Notice to be served through the
Managing Director, Tripura Road
Transport Corporation, Krishnanagar,
Agartala, District-West Tripura),

6. Sri Janardhan Roy,
Son of Not known,
Resident of Indranagar South,
I.T.I. Road, P.O. Kunjaban,
Agartala, P.S. East Agartala,
District-West Tripura,

7. Sri Sudarshan Chakraborty,
Upper Division Clerk,
Tripura Road Transport Corporation,
(Notice to be served through the
Managing Director, Tripura Road
Transport Corporation, Krishnanagar,
Agartala, District-West Tripura),

8. The Regional Provident Fund Commissioner,
Gurkhabasti, P.S. West Agartala,
District- West Tripura.

BY ADVOCATES :

Mr. S. Chakraborty, Addl. GA,
Mr. P. Dutta,

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

Date of hearing & delivery of
Judgment & order : **18.09.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

Heard learned counsel, Mr. P. Roy Barman for the petitioners and learned Additional Government Advocate, Mr. S. Chakraborty for the State-respondent No.1 as well as learned counsel, Mr. P. Dutta for the respondent Nos.2, 3 and 4.

2. This is the third round of litigation of the petitioners for the reliefs prayed in the present writ petition. It is, *inter alia*,

contended by the petitioners that the petitioner No.1 was appointed as Lower Division Clerk(for short 'LDC') under the respondent No.2 on 02.01.1973 and the petitioner No.2 was appointed as Bus Conductor under the same respondents on 01.04.1974 in the same pay scale. Both of them got promotion as Upper Division Clerk(for short 'UDC') on 02.09.1982. It is the case of the petitioners that respondent Nos.5, 6 and 7 were also appointed as LDC, but they were junior to the petitioners and respondent No.5 got promotion as UDC on 07.01.1986 and thereafter respondent Nos.6 and 7 got promotion as UDC on 28.09.1987. It is alleged by the petitioners that respondent Nos.5, 6 and 7 were drawing higher pay than that of the petitioners though the petitioners were seniors to them and the petitioners made representation to the respondent No.3, but got no positive response and, therefore, the petitioners preferred Civil Rule No.123 of 1998 before the then Gauhati High Court, Agartala Bench and the Civil Rule was disposed of by order dated 13.05.1998, which reads as follows :-

"13.5.98 Heard Mr. P. Roy Barman, learned counsel for the petitioners. Also heard Mr.U.B.Saha, learned Government Advocate for the respondents.

According to the petitioners persons/ employees juniors to petitioners in the same pay scale are getting higher pay packets as compared to the pay packets of the petitioners. Hence, they have approached this Court for a direction to the Government to enhance or step up their pay so as to make it higher or equivalent with the pay received by their juniors. It is stated that representations/ memoranda had been submitted by the petitioners to the government for doing the needful, but the same was not attended to.

The question as to whether petitioners are seniors or juniors to the others who are getting

higher pay packets and as to what is the reason that petitioners being seniors are getting lesser pay packets as compared to their juniors can better be looked into by the Government itself rather than by this Court.

I accordingly direct that the petitioners may file fresh representation along with the copy of this order to the Government whereupon the State Government shall look into the matter and pass appropriate orders in that regard within a period of three months from the date of receipt of the representation.

The petitioners undertake to make their representation along with the copy of this order before the Government within three weeks.

If the petitioners do not get relief at the Government level they will be free to approach this Court again.

The petition is accordingly disposed of."

3. Pursuant to the above order, the petitioners made a representation to the respondent No.3 enclosing copy of the order dated 13.05.1998 passed in Civil Rule and the copy of the writ petition and they prayed for stepping up of their pay to the same pay of their juniors. The representation was not answered by the respondents and ultimately the petitioners preferred a second writ petition No. W.P.(C) 550 of 1998. That writ petition was disposed of by order dated 01.12.2008, which reads as follows:-

"01.12.08

Heard Mr. P. R. Barman, learned counsel for the petitioners as well as Mr. S. Chakraborty, learned State counsel. I have also heard Mr. S. Dey, learned Sr. counsel assisted by Mr. P. Dutta, learned counsel for the respondent Corporation.

This writ petition has been filed praying for a direction to the respondents to step up the pay of the petitioner at par with the respondents No.4 to 6. On an earlier occasion also, the petitioners had approached this Court by filing a writ petition being C.R.No. 123/98 and the same was disposed of by order dated 13.05.98. By the said order it was

provided that the petitioners would make representation to the authority and the authority would pass appropriate order within three months from the date of receipt of the representation. The Govt. having not passed any order in spite of repeated representations made by the petitioners they invoked the writ jurisdiction of this Court.

It is an admitted position that no order has been passed by the Govt. in terms of the aforesaid order dated 13.05.98 in C.R. No.123/98. In the counter affidavit filed by the respondents, they have not disputed the claim of the petitioners. The respondents No.2 and 3 in their counter affidavit have stated thus:-

"15. That in reply to the contention made in paragraph 8 of the writ petition the answering respondent deny and dispute and beg to state that the main dispute is that the pay of the petitioners have been fixed as per provision of F.R.22(C) as on 02.09.82 directly in the promotion post of U.D. Clerk as while there was no provision of electing fixation as per F.R.22(a)(i) & subsequently F.R.22(C). But pay of the respondent No.4, 5 and 6 were fixed as per provision of 22(a)(i) as on the date of promotion and subsequently on the date of earning next increments in the promotion post as per provision of F.R.22(C) in the scale of promotion post i.e. on the 1st April in every year. Further dispute is noticed that the pay difference in refixation pay of the petitioners and the respondent No.4 to 6 were very as because petitioners has not promotion earlier in the year 1982 whereas respondent No.4 to 6 have promotion in the year 1986 and 1987 respectively. In this connection, pay of the petitioners were step-up by invoking F.R.27, so as to bring the petitioners identical without respondent No. 4 to 6(i.e. juniors) as on 01.04.87 in the pre-revised scale of Rs.550-1245/- vide order No.F.1(101)-TRTC/Pay-Anomalies/88/5225 dated 14.12.88, but owing to some administrative lacuna or otherwise pay of the petitioners could not be fixed as on 01.04.87 in the pre-revised scale of Rs.1245-2890/- as per provision of R.O.P. Rules, 1988 identical to the pay of the respondents No.4 to 6.

19. That in reply to the contention made in paragraphs 12 to 16 of the writ petition the answering respondent state that in fact on receipt of the directives of the Hon'ble High Court passed on 13.05.98 in Civil Rule No.123/98 the issue was taken up with the Under Secretary to the Government of Tripura, Agartala under No.F. 9(220)-GEN(L)/TRTC/98/552 dated 03.07.98 to convey decision of the Government as to the refixation of the pay of the petitioners identical to the pay of respondent No.4 to 6 in terms of Finance Department Memorandum No.F.19(1)-

FIN/G/83 dated 07.10.88. Since Government communication is not receiving in time, respondent No.2 taken up the matter again with the Government vide letter No.F. 9(220)-GEN(L)/TRTC/98/1407 dated 09.11.98. Ultimately government has communicated the decision under No. F.6(29)-Trans/89 dated 25.02.99 to regulate the pay of the petitioners as per Finance Deptt. O.M. No.19(1)-FIN/G/83 dated 07.10.88 with a request to transmit the pay fixation report of the petitioners to the Transport Department for approval of the Finance Department. The respondent No.2 has been set re-fixation report of the petitioners in pursuance of the Finance Department's O.M. No.F.19(1)-FIN(G)/83 dated 07.10.88 to the Under Secretary to the Government of Tripura, Transport Department vide letter No.F.9(220)-GEN(L)-TRTC/2470 dated 19.03.99 for according approval of the Finance Department, Government of Tripura & communicate the same to the respondent No.2. There appears no cause of action now against the present suit as because petitioners claim yet to be settle soon just receipt of Government communication as above."

Same is the contention of the respondent No.1 in the counter affidavit. The contention in paragraphs 15 and 19 is the replica of the contention of the counter affidavit filed by the respondents No.2 and 3 which have been quoted above.

On perusal of the aforesaid counter affidavits filed by the respondents what has emerged is that the Govt. in the Finance Department is yet to take a decision and to pass appropriate order. It is unfortunate that in spite of the order passed by this Court way back in 1998 (13.05.98) in C.R. No. 123/98 directing the Govt. to take a decision in the matter and to pass appropriate order within three months, even after expiry of long 10 years, the Govt. in the Finance Department has not passed any order. Such approach on the part of the Govt. in the Finance Department is reprehensible. At this stage, Mr. Chokraborty, learned State counsel submits that in all possibility, the Govt. did not pass any order because of the pendency of the instant writ petition.

Considering the above, the writ petition is disposed of directing the Govt. in the Finance Department to pass an appropriate order as expeditiously as possible, but at any rate, not later than 28.02.09. While doing so they shall bear in mind the contentions raised in paragraphs 15 and 19 of the counter affidavit quoted above. At this stage, Mr. Barman, learned counsel for the petitioners submits that since the juniors to the petitioners are getting higher pay, there is no escape from stepping up the pay of the petitioners

at per with the said juniors. Govt. shall consider this aspect of the matter while deciding the issue.

With the above directions, writ petition is disposed of."

4. After the above order was passed, the State Government in the Finance Department took up the petitioners' case and by Memo dated 28.02.2009 (Annexure-17 to the writ petition), the Finance Department of the Government of Tripura regretted the claim of the petitioners and the Memo reads as follows :-

***"F.3(2)-Fin(PC)/93(p-1)
Government of Tripura
Finance Department
Agartala.***

28 February 2009

MEMORANDUM

In compliance of the Order passed by the Hon'ble High Court on 1 December 2008 in Case No.WP(C) 550/98, the matter was taken up for careful and sympathetic consideration by State Govt. in the Finance Department. On consultation of relevant records, it has been appeared that Shri Sadhan Banerjee and others of Tripura Road Transport Corporation(TRTC) agitated their grievance about their pay not having been stepped up vis-à-vis their juniors. Matter has been examined in the context of relevant instructions issued by Finance Department in this regard on 14 February 1985 under Tripura Government Services(RP) Rules, 1982.

2. It has appeared that the petitioners were promoted to the posts of UDCs in 1982 i.e. prior to 14 February 1985 the date on which provisions for stepping up of pay was introduced by the State Govt. vide its instructions as stated above. Since the promotion of the petitioners took place on prior date(s), pay was fixed directly under provisions of FR.22(C).

3. As indicated in the foregoing part, State Govt. in the Finance Department did not have any scope to grant the benefit of stepping up of pay to the petitioners, since there was also no provision before 14 February 1985 for exercising option by an employee in case of his promotion to a higher post. It is pertinent to note that employees junior to the petitioners got promotion after 14 February 1985

i.e. subsequent to introduction of facility of stepping up and exercising option on promotion.

4. In the context of details discussed above and after sympathetic examination of the matter it appears that there is neither any reasonable ground nor any scope to provide relief of stepping up of pay of the petitioners since this also will have cascading effect across the government with un-specified financial implications. Matter is, therefore, disposed of accordingly.

***Sd/- 28.2.09
(N. Darlong)
Joint Secretary
Govt. of Tripura"***

5. It is an admitted position that the petitioners were seniors to respondent Nos.5 to 7. The petitioners were promoted in the year 1982 in the post of UDC and respondent No.5 was promoted in the year 1986, whereas respondent Nos.6 and 7 were promoted in the year 1987. It is also an admitted position that respondent Nos.5 to 7 were drawing higher pay than that of the petitioners.

6. By filing counter affidavits the respondent Nos.1 to 4 contended that the petitioners got promotion in the year 1982 and at that time there was no provision of exercise of any option and their pay was fixed as per provision of FR 22(C). The State-respondent and respondent Nos.2 to 4 further contended that respondent Nos.5 to 7 were promoted in the year 1986 and 1987 respectively and that in the year 1985 the State Government issued Memorandum introducing the exercise of option at the time of promotion and because of exercise of option at the time of promotion the pay of the respondent Nos.5 to 7 were fixed and they got consequently higher pay in terms of FR 22(a)(i).

7. In the Memo dated 28.02.2009(Annexure-17 to the writ petition) the Finance Department did not assign any reason as to why the respondent Nos.5 to 7 were drawing higher pay than that of the petitioners. If it was a direct effect of FR 22(C), the petitioners cannot claim a stepping up. But if it was because of exercise of option whereas there was no scope for such exercise of option by the petitioners when they were promoted, the petitioners cannot be deprived of the same pay which was drawing by their juniors. According to the respondents, because of the introduction of the provision of exercise of option in the year 1985 and because of the fact that respondent Nos. 5 to 7 got promotion after 1985, they were drawing higher pay than that of the petitioners in view of their exercise of option pursuant to the Government Notification and since there was no scope for the petitioners to exercise such option, they cannot be deprived from the similar pay, which their juniors were allowed to draw.

8. I am, therefore, of the considered opinion that Annexure-17 to the writ petition, i.e., Memorandum dated 28.02.2009, is not tenable and, therefore, the same is set aside and quashed. The official respondents are directed to allow the benefit of stepping up of pay of the petitioners to that of the pay which was allowed to their juniors, i.e., respondent Nos.5 to 7 and to calculate the benefit, i.e., arrears which the petitioners would be entitled and to give the benefits to the petitioners within 90(ninety) days from today.

9. With the above observations and directions, the writ petition stands disposed of. Parties to bear their own costs.

JUDGE