THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 179 OF 2008

Yunuch Mia Sarkar,
S/o Lt. Inswar Mia Sarkar,
Resident of Khilpara,
P.S. R.K.Pur,
District-South Tripura.

---Petitioner

- Vs –

1. **The State of Tripura,**
   Represented by the
   Secretary to the Government of Tripura,
   Finance Department, Agartala.

2. **The Secretary to the**
   Government of Tripura,
   Education (School) Department,
   Agartala.

3. **The Director of School Education,**
   Government of Tripura,
   Agatala.

4. **The Accountant General,**
   Tripura, Office of the
   Accountant General (A & E),
   Malanchanibash, Agartala.

---Respondents

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

For the petitioner	**:**	Ms. S. Deb Gupta, Advocate.
For the State-respondents	:	Mr. T. D. Majumder, G.A.
For the respondent No.4	**:**	Mr. A. Roy Barman, CGC.
Date of hearing	:	**09.06.2015.**
Date of delivery of Judgment & Order	**:**	**16.07.2015.**
Whether Fit for Reporting	**:**	**NO**

JUDGMENT & ORDER

By filing this writ petition, the petitioner *inter alia* prayed for the following reliefs:-

(i) Issue Writ directing the Respondents and the Respondent No.4 in particular to set aside the office order No.Pers-I/PR150(S)/EDN-PRY/2005-06/5343, dated 30.09.2005 forthwith and in no time;

(ii) Issue Writ directing the Respondents and each of them to refix the pay of the Petitioner at the scale of pay of Rs.5500-10700/- w.e.f. 31.03.1996 and to release all pecuniary benefits thereupon including the release of the increments on fresh fixation of the pay and to make payment of the arrears within such period as would be stipulated by this Hon'ble Court;

(iii) Issue Writ directing the Respondents and each of them to refix the pension and other retiral benefits of the Petitioner on the basis of the demand as placed by the Petitioner meaning thereby fixing the pay of the Petitioner in the scale of pay of Rs.5500-10700/- w.e.f. 31.03.1996 and calculating the pay accordingly on his date of superannuation on 31.05.2005 within such period as would be stipulated by this Hon'ble Court.

2. Heard learned counsel Ms. S. Deb Gupta for the petitioner and learned G.A., Mr. T.D. Majumder for the State-respondent Nos. 1 and 2 and learned CGC, Mr. A. Roy Barman for the respondent No.4.

3. The petitioner, *inter alia*, contended that he was appointed as Assistant Teacher in the pay scale of Rs.125-200/- w.e.f. 19.06.1973 and ultimately absorbed as Assistant Teacher w.e.f. 01.02.1974. The pay scale was subsequently revised to Rs.240-440/- w.e.f. 01.04.1974. He completed his degree of Bachelor of Arts on 31.03.1982 and thereafter he was absorbed in the pay scale of Rs.325-625/- from the date of his acquiring the Bachelor degree. That pay scale was revised to Rs.430-850/- and later on further modified to Rs.600-1440/- and accordingly on 03.08.1988 his pay was fixed at Rs.625/-. The pay scale of Rs.560-1300/- which was modified to Rs.600-1440/- was revised to Rs.1300-3220/- after Tripura State Civil Services (Revised Pay) Rules, 1988 and accordingly on 01.07.1987 his pay was fixed at Rs.1810/-. Thereafter on his completion of 10 years of service he was moved to the pay of Rs.1450-3710 w.e.f. from 31.03.1989 with DNI on 01.07.1989 and his pay was accordingly fixed on 01.07.1989 at Rs.1930/-. That scale of pay was revised to Rs.5000-10,300/- as per Tripura State Civil Services (Revised Pay) Rules,1999 w.e.f. 01.01.1996 and his pay on 01.07.1996 was fixed at Rs.6990/-. It is contended by the petitioner that as per Rule 10(b) of R.O.P. Rules, 1999 employees entering by direct recruitment in the existing scale No. 4 to 10 or revised scale No. 5 to 10 or corresponding earlier scale will have two scale advancements in the next higher scale as per table in Amnnexure-A at the end of 10 and 7 years of continuous and satisfactory service in the entry scale and higher scale of promotion/gradation or advancement respectively as the case may be to the higher scale unless they got promoted to the higher scale before prescribed period at each stage.

The petitioner contended that his entry scale was Rs.600-1440/- i.e. the scale meant for Graduate Teachers which he acquired after having degree of Bachelor of Arts on 31.03.1982 and as per the Govt. policy he got first Career Advancement Scheme (for short CAS) on 31.03.1989 in the pay scale of Rs.1450-3710/- which corresponds to revised scale of Rs.5000-10,300/- as per the ROP Rules, 1999 and the second CAS i.e. Rs.5500-10700/- ought to be given w.e.f. 31.03.1996 but by Office Order dated 30.09.2005 the respondent No.4 given the benefit w.e.f. 19.06.2002 instead of 31.03.1996 and thereby the respondents illegally applied the provision in respect of fixation of pay of the petitioner. It is the case of the petitioner that he is entitled to get scale of Rs.5500- 10700/- w.e.f. 31.03.1996 with all increments and other financial benefits as per Rules. The respondents deprived him from the legitimate due by way of avoiding the provision prescribed in Rule 10(b) of the R.O.P. Rules,1999. His last pay was thus wrongly fixed on 31.05.2005 i.e. the date of his retirement and accordingly, he prayed for the relief as stated hereinbefore.

4. Respondent Nos. 1, 2 and 3 by filing a joint counter affidavit *inter alia* contended that the petitioner was an Under-graduate and he was appointed as an Asstt. Teacher (primary) in the scale of Rs.125-200/- w.e.f. 19.06.1973. That pay scale was revised to Rs.240-440/- under the Tripura Govt. Employees

(Revision of Pay and Allowances) Rules,1975. The pay of the petitioner was fixed under ROP Rules, 1975 at Rs.304/- as on 01.03.1974 in the pay scale of Rs.240-440/-. The petitioner passed Bachelor of Arts examination on 31.03.1982. As per the Govt. order dated 07.03.1981, the petitioner was allowed pay scale of Asstt. Teacheer (Middle/High school) without being absorbed which was revised to Rs.335-665/- w.e.f. 31.03.1982 i.e. the date of his result of B.A. examination. He was never appointed or absorbed in the post of Asstt. Teacher (Middle/High school). His service was never utilized by the Govt. in that Grade though by operation of Memo dated 07.03.1981 he was allowed the higher pay scale of Rs.325-665/- w.e.f. 31.03.1982 and his pay was fixed at Rs.370/- plus Personal Pay of Rs.10/- in the scale of pay of Rs.325-665 under FR 22(a)(ii).

Under the Tripura Govt. Employees (Revised Pay) Rules,1982 and the Tripura Civil Services (Revised Pay 17th Amendment) Rules,1986 the pay of the petitioner was re-fixed at Rs.585 plus Personal Pay of Rs.25 in the revised pay scale of Rs.560-1300/- as on 31.03.1982. Thereafter the pay was again fixed as on 31.03.1982 in the modified pay scale of Rs.600-1440/- in reference to the fixation under the 17th Amendment of the ROP Rules, 1986 since the petitioner has opted to come to the ROP Rules,1988 on 01.07.1987. The pay of the petitioner was fixed notionally at Rs.1810/- on 01.07.1987 i.e. on the date of option in the revised pay scale of Rs.1300-3220. Such Assistant Teachers who were thus allowed higher pay scale were ear-marked in the ROP Rules,1988 as Personal Scale Holder and they were allowed to move to the next Higher Scale only on completion of 7 years service with cash benefit w.e.f. 01.01.1992 vide Memo dated 17.12.1992 and accordingly pay of the petitioner was fixed on 31.03.1989 at Rs.1870/-. The petitioner cannot exercise option to come to the revised pay scale under ROP Rules,1999 on 01.07.1996. Accordingly, the pay of the petitioner was fixed on 01.07.1996 at Rs.6990/- in the revised pay scale of Rs.5000-10,300/- and thereafter on 19.06.2002 his pay was fixed at Rs.7750/- in the next higher pay scale of Rs.5700-10700/- as CAS-III as per provision in Rule 10 of the R.O.P. Rules,1999 read with proviso below clauses (ii) under paragraph 2 of 7th Amendment of the R.O.P. Rules vide Memo dated 19.05.2001. The fixation was in consonance of the observation made by the Accountant General of Tripura in their letter dated 30.09.2005. It is contended by the respondents that the petitioner misconstrued the item No. III below sub-Rule (e) of the Rule 10 of the R.O.P. Rules wherein it was provided that existing employees who have availed prescribed number of scale advancement by way of promotion or gradation under the Part B or C of the Tripura Civil Services (Revised Pay) Rules,1988 as per Rule 5(3) thereof as on 01.01.1999 after entry into service, will not be eligible for any further advancement. Later on, the Finance Department, which is authorized to clarify, has clarified under their Memo dated 17.02.2005 that movement to higher pay scale on acquiring higher qualification should be treated as movement under CAS (modified) as per the Tripura State Civil Services (Revised Pay) Rules, 1999. Accordingly, allowing the higher pay scale to the petitioner on

31.03.1982 for obtaining his Bachelor of Arts Degree must be treated as CAS-I and allowing next higher pay scale of Rs.1450-3710/- as on 31.03.1989 corresponding to revised pay scale of Rs.5000-10,300/- was his second CAS i.e. CAS-II. He was entitled to the next higher pay scale of Rs.5500-10,700/- as per ROP Rules,1999 on completion of 29 years of total service or 12 years of service from CAS II as per the Tripura State Civil Services (Revised Pay) Rules,1999 vide Rule 10 read with proviso (bb) of the Tripura State Civil Services (Revised Pay 17th Amendment) Rules,2001 vide notification dated 19.05.2001. Therefore, there was no ground exists to claim his pay scale of Rs.5500-10,700/- w.e.f. 31.03.1996 as being not covered under relevant provision of ROP Rules.

5. Respondent No.4 also by filing counter affidavit contended that the revised scale of pay of Rs.430-850/- was meant for "Under Graduate Teacher" under ROP Rules, 1982 and it was modified scale of Rs.470-1020/- and not Rs.600-1440/- as claimed by the petitioner. As such his pay was wrongly fixed by the Head of Office at Rs.625/- which should have been fixed at Rs.600/- on 01.01.1982. On Acquiring Bachelor Degree on 31.03.1982 he was entitled to get his pay fixed at Rs.600/- plus P.P. Rs.25/- in the modified scale of pay Rs.600-1440 with DNI on 01.07.1982 as per Finance Department O.M. dated 02.11.1989 and accordingly his existing pay for the purpose of fixation of pay under ROP Rules was Rs.810/- instead of Rs.845/-. So, in the revised scale of Rs.1300-3220/- his pay on option date i.e. 01.07.1987 was fixed at Rs.1865/- with DNI on 01.07.1988 and the same was re-fixed notionally at Rs.1810/- in the scale (Graduate scale) Rs.1300-3220/- for acquiring Bachelors Degree as per Finance Department O.M .dated 07.12.1992 with DNI on 01.07.1988.

It is further contended by the respondent that the petitioner was allowed next higher scale of Rs.1450-3710/- on 31.03.1989 on completion of 7 years as Graduate Teacher. His pay was fixed as per Finance Department Office Memo dated 02.11.1989 and Office Memo dated 30.08.1996. It is also contended by the respondents that the petitioner entered in the Govt. service on 19.06.1973 as an Under Graduate Teacher. So the entry scale of the petitioner was Rs.240-440/- prescribed for Under Graduate Teacher and he was allowed Graduate scale of Rs.325-665/- on 31.03.1982 after his Bachelor Degree. As per the Govt. of Tripura, Finance Department's letter dated 16.06.2004 it was clarified that movement to higher pay scale for acquiring higher qualification will be treated as gradation/movement for the purpose of CAS. Therefore, the petitioner was allowed first gradation on 31.03.1982 for acquiring Bachelor's degree and second gradation on 31.03.1989 after completion of 7 years as a Graduate Teacher and scale of Rs.5500-10700/- was admissible to him on 19.06.2002 as CAS III benefit for completion of 29 years of service as per the 7th Amendment of ROP Rules,1999 vide Finance Department O.M.dated 19.05.2001. Accordingly his pay was fixed in the said scale on 19.06.2002 at Rs.7750/- under the provision of FR 22(I)(a)(2) as per 7th Amendment of the ROP Rules and as such the claim of the petitioner that the provision was wrongly applied and his pay was wrongly fixed was not correct and the fixation was correctly made. It is contended by the respondent that the petitioner was entitled to the scale of pay of Rs.5500-10,700/- on 19.06.2002 and not on 31.03.1996 and therefore, the respondent No.4 after properly verifying the records in respect of fixation of pay of the petitioner wrote letter dated 30.09.2005 to the Inspector of Schools, Udaipur, South Tripura and also requested him to get clarification from the Finance Department if necessary. A copy of impugned letter dated 30.09.2005 has been annexed as Annexure R/5 to the counter affidavit.

6. The petitioner joined the service as an Asstt. Teacher (primary) w.e.f. 19.06.1973. He was Under Graduate at that time. He done his graduation on 31.03.1982 and he was allowed the pay scale of Rs.325-665/- meant for a Graduate Teacher. He retired on 31.05.2005 as a Graduate Teacher. After his retirement when his pension proposal was sent to respondent No.4, his service records in respect of his fixation of pay time to time was examined by respondent No.4 and on such examination respondent No.4 found fault in the fixation of the petitioner since it was contrary to the provisions of the revision of pay Rules and the Office Memos of clarification issued by the Finance Department time to time and clarifying the position regarding correct fixation of the petitioner, respondent No.4 wrote impugned letter dated 30.09.2005 to the Inspector of Schools, Udaipur, South Tripura who was the D.D.O. of the petitioner and in that letter the details of the fixation of the petitioner has been clarified which reads as follows:-

"To
The Inspector of Schools,
Udaipur, South Tripura.

Subject: Pension proposal in respect of Md. Yunuch Mia Sarkar, Retd. A/T.

Reference: F.2(32-355)/IS-UDP/2004/3238-39 dated 23-6-2005.

Sir,

I am to invite a reference to the above and to state that the retired Government servant passed B.A. examination on 31-3-1982. So pay would be fixed at Rs.600/- on 31-3-1982 under the provision of FR 22(I)(a)(II) instead of 1-1-1982. So as per TSCS (RP) Rules 1988 pay would be fixed at Rs.1810/- with reference to pay of Rs.810/- on 1-7-1987 instead of Rs.1865/-.

The scale of pay of Rs.5500-10700/- as CAS-3 is admissible with effect from 19-6-2002 i.e. after completion of 29 years of service instead of 1-7-99 as the retired Government servant already availed 2 scale advancement on 31-3-1982 and 31-3-1989.

However, pay appears to be fixed as follows:

Existing pay as on 1-1-1982 Rs. 600/-.

Modified scale Rs.470-1025/-.

Next stage Rs.625/-

Passed B.A. on 31-3-1982.

Modified scale Rs.600-1440/- Rs. 600/-
PP 25/-
Rs. 625/-

1-7-82	-	635/-		
1-7-83	-	670/-		
1-7-84	-	705/-		
1-7-85	-	740/-		
1-7-86	-	775/-		
1-7-87	-	810/-		810.00
		DP	-	421.20
		FB	-	184.68
		ADA	-	129.60
		IR	-	162.00
				1707.48

Revised scale admissible Rs. 1300-3220

Under Graduate Scale Rs. 1300-3220/-

ACTUAL

Next stage	-	1755
15 years	-	NIL
5 Yrs x 2	-	110
		1865 (1-7-87)
1-7-88	-	1920
1-7-89	-	1975
1-7-90	-	2030
1-7-91	-	2085
to 31-12-91	-	

Graduate scale Rs.1300-3220/-
(as per Govt. order dated 7-12-92)

NOTIONAL

Next stage	-	1755
15 Yrs	-	NIL
5 Yrs x1	-	55
		1810 (1-7-87)
1-7-88	-	1865/-
31-3-89 (Rs.1450-3710/-)		

1810
55(PP)
1865

NOTIONAL 1-7-89	-	1870
1-7-90	-	1930
1-7-91	-	1995
To 31-12-91		
C.B 1-1-92		1995
ACTUAL 1-7-92	-	2060
1-7-93	-	2125
1-7-94	-	2190
1-7-95	-	2255
1-7-96	-	2320

1810 FR 22(a)(I)

NOTIONAL 1-7-89	-	1930
1-7-90	-	1995
1-7-91	-	2060
1-7-92	-	2125
1-7-93	-	2190
1-7-94	-	2255
1-7-95	-	2320
1-7-96	-	2385
C.B with effect from 1-8-96		
C.B 1-8-96	-	2385
ACTUAL 1-7-97	-	2450
1-7-98	-	2520
to 30-9-98		

As per ROP'99

Pay as on 1-7-96	-	Rs.2385.00	
DA	-	3529.80	
IR	-	332.00	
FB	-	715.50	
	Total	Rs.6962.30	
Revised scale Rs.5000-10300/-			
Next stage	-	6990	(1-7-96)
1-7-97	-	7140	
1-7-98	-	7290	
1-7-99	-	7440	
1-7-2000	-	7590	
1-7-2001	-	7740	
19-6-2002	-	7750	
CAS-3 (Rs.5500-10700/-)			
1-6-2003	-	7925	
1-6-2004	-	8100	(Last pay)

In view of above, you are requested to re-examine the case and in case of acceptance re-fix his pay accordingly. The Service Book is returned herewith which may be re-submitted after making revised entries in it along with due drawn statement of pay and allowances and leave encashment etc. and revised LPC.

In case of any doubt, matter may be referred to the Finance Department, Tripura.

It appears from Form-3 as well as Form-7 that he has 2(two) wives namely Phinua Begam and Sujata Begam out them against Sujata Begam it is mentioned abstained wife (separated). In this connection it may be confirmed who is 1st and who is 2nd whether Sujata Begam is legally separated, if not Sujata Begam is also eligible for family pension.

Pension and other retirement benefits will be issued on receipt of reply from your end.
Enclo : Service Book

Yours faithfully,
Sd/-
Senior Accounts Officer

Memo No.; Pen-I/PR 150(S)/Edn-Pry/2005-06/5343-44
Dt. 30-09-2005
Copy forwarded for information to:
Md. Yunuch Mia Sarkar, Retc. A/T.
Vill +PO-Khilpara
Udaipur, South Tripura.

=Sd/-
Senior Accounts Officer"

7. The State-respondents, as it appears as per the above clarification given by the respondent No.4 re-fixed the pay of the petitioner in alteration of the earlier fixation and the petitioner felt aggrieved and therefore, filed the present writ petition.

8. It is an admitted position that the petitioner joined the job as an Asstt. Teacher in the Primary level and he was Under-graduate at that time. He has done his graduation on 31.03.1982 and moved to the higher pay scale of Rs.325-665/-. According to the petitioner that was ordinary movement to the higher scale but the respondents referring to the clarification issued by the Finance Department contended that it was CAS-I in respect of fixation of pay of the petitioner. According to the petitioner after ROP Rules,1988 on 31.03.1989 he was moved to the scale of Rs.1450-3710/- and that was the first movement of CAS-I but the respondents contended that it was CAS-II since the petitioner got CAS-I on his first movement to higher pay scale after his attaining the Bachelors Degree. The petitioner contended that as per Rule 10(b) he was entitled to CAS-II and his movement to the scale of Rs.5500-10700/- w.e.f. 31.03.1996 shall be treated as CAS-II. The respondents contended that Rule 10 of ROP Rule was amended and the provision of Rule 10(ii)(bb) was added which reads as follows:-

> *"(bb) A group C employee (other than cadre services) mentioned in clause (b), whose second scale advancement (CAS-2) is lower than the pay scale of the next higher post of his service shall be entitled to get third scale advancement on completion of twelve years' continuous and satisfactory service in CAS 2 and total twenty nine years of service (10+7+12=29) or (7+10+12=29) if in the meantime he does not get any promotion."*

9. As per the above rule, the petitioner was entitled to CAS-III after completion of 29 years of continuous service from the date of his appointment i.e. 19.06.1973 and 29 years complete only on 19.06.2002. On perusal of the Finance Department's clarificatory memorandum, I find that the petitioner got first CAS after his graduation when he was given the graduate scale of Rs.325-665/-. He got the second CAS on 31.03.1989 when he was moved to the scale of Rs.1450-3710/-. He was entitled to 3rd CAS only after 29 years of continuous service and so the respondents rightly held that he is entitled to CAS-III w.e.f. 19.06.2002 and not from 31.03.1996 as claimed by the petitioner.

10. I find nothing wrong in the fixation done by the respondents and it appears that the respondents taking into account the Finance Department's memorandum issued time to time has done the fixation and there is no infirmity in the impugned letter dated 30.09.2005 issued by the respondent No.4 and hence, the writ petition is found to be devoid of any merit and accordingly stands dismissed.

11. Parties to bear their own costs.

JUDGE