

**THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) NO. 259 of 2006

Shri Ajit Kumar Sinha,
S/O. Shri Brajendra Kumar Sinha,
Sub-Inspector of Police(Armed),
Office of the Reserve Inspector,
Dhalai District, Ambassa.

..... Petitioner.

- Versus -

1. The State of Tripura,
Represented by the Commissioner-
Cum-Secretary, Home Department,
Tripura, Agartala,

2. The Commissioner-Cum-Secretary
to the Government of Tripura,
Finance Department, Agartala,
West Tripura.

3. The Director General of Police,
Government of Tripura,
Police Headquarters,
Agartala, West Tripura,

4. The Supdt. of Police,
Dhalai District, Ambassa.

..... Respondents.

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

For the petitioner	: Mr.A. Lodh, Advocate,
For the respondents	: Mr. S. Chakraborty, Additional Govt. Advocate.
Date of hearing	: 25.03.2015.
Date of delivery of Judgment and order	: 28.05.2015.
Whether fit for reporting	: No.

JUDGEMENT AND ORDER

By filing this writ petition, the petitioner prayed for directing the respondents to provide him the benefits of pay scale of Rs.1450-3710/- w.e.f. 02.12.1987, i.e. from the date of his entry to the service as a Sub-Inspector of Police (for short 'S.I. of police') under the Police Department of the Government of Tripura and also for grant of pay scale of Rs.7450-13000/- w.e.f. 02.12.1997 as per Tripura State Civil Services (Revised Pay) Rules, 1999 (for short 'ROP Rules 1999') and further to provide him the next graded pay scale of Rs.10000-15100/- on his completion of 17 years of service, i.e. w.e.f. 02.12.2004 under Rule 10 of ROP Rules 1999.

2. Heard learned counsel, Mr. A. Lodh for the petitioner and learned Additional Government Advocate, Mr. S. Chakraborty for the respondents.

3. It is the case of the petitioner that he joined the service as a S.I. of police under the respondents on 02.12.1987 in the existing pay scale of Rs.560-1300/-. Under Revision of Pay Rules, 1988 (for short 'ROP Rules 1988') the pay scale of Rs.560-1300/- was revised to Rs.1300-3200/-. Subsequently, Finance Department vide Memorandum dated 07.11.1992 revised the scale of Rs.1300-3200/- to Rs.1450-3710/- w.e.f. 01.11.1992. Thereafter by another Notification dated 21.09.1995 (Annexure-2 to the writ petition) Finance Department of the Government of Tripura declared that the revised scale of Rs.1450-3710/- under

ROP Rules 1988 shall be the initial scale of S.I. of police and that shall be effective from the date of coming into effect of ROP Rules 1988, i.e. 01.01.1986.

3.1. The petitioner claimed that since he was appointed on 01.07.1987 in the post of S.I. of police, he was entitled to the scale of Rs.1450-3710/- instead of scale of Rs.1300-3200/- w.e.f. 01.12.1987.

3.2. The petitioner alleged that by Memo dated 07.11.1992 his pay was fixed in the scale of Rs.1450-3710/- wrongly and illegally w.e.f. 01.11.1992 instead of 02.12.1987, i.e. the date of his appointment and thereby deprived him the benefit of Notification dated 21.09.1995.

3.3. The petitioner further contended that when he completed 10 years of continuous service on 02.12.1997, he was given the graded scale of Rs.1700-3980/- w.e.f. 02.12.1997 and that pay scale was actually meant for the Inspector of Police and since he did not get any promotion within 10 years of service as per ROP Rules he was given the benefit of that graded scale of the higher post.

3.4. Under ROP Rules 1999, which came into effect from 01.01.1996, the pay scale of Rs.1700-3980/- was revised to Rs.7450-13000/-. The pay scale of S.I. of police was revised from Rs.1450-3710/- to Rs.5500-10300/- and the pay scale of Inspector was revised from the scale of Rs.1700-3980/- to

Rs.7450- 13000/-. Since the petitioner did not get any promotion, as per ROP Rules, he was given the graded scale of Rs.1700-3980/-, which was actually the scale of Inspector of police. As per ROP Rules 1999 he was entitled to the revised scale of Rs.7450-13000/-. The petitioner contended that after ROP Rules 1999 came into force his pay scale was wrongly fixed in the pay scale of Rs.5500-10300/-, which was the revised scale of S.I. of police and thereby deprived him from the pay scale of Rs.7450-13000/-.

3.5. The petitioner further contended that some of the similarly placed S.I. of police filed Civil Suits challenging the wrong fixation of pay in the scale of Rs.5500-10300/- and those Civil Suits were ultimately brought in second appeal before the then Agartala Bench of the Gauhati High Court and challenging the judgment of the appellate Court RSA No. 44 of 2003 and RSA No. 45 of 2003 were filed by the State of Tripura and RSA No.46 of 2003 and RSA No. 47 of 2003 were filed by the plaintiffs, i.e. S.I. of police and all those four appeals were heard and by a common judgment dated 10.01.2006 the appeals filed by the plaintiffs were allowed and the appeals preferred by the State-respondents were dismissed. The High Court in the second appeal held that the plaintiffs-S.I. of police, who were given pre-revised scale of Rs.1700-3980/- shall be entitled to revise scale of Rs.7450-13000/- as per ROP Rules 1999. The petitioner also contended that as per Rule 10 of ROP Rules 1999 he was entitled

to Career Advancement Scheme (for short 'CAS') w.e.f. 01.01.1999 on his completion of 17 years of service and he further contended that he did not get any promotion in his entire service life and till the date of filing the writ petition he was working in the post of S.I. of police. He, therefore, claimed that he is entitled to second graded scale of Rs.10000-15100/- w.e.f. 02.12.2004.

4. The respondents by filing counter affidavit contended that as per Memo dated 05.01.1996 the pay scale of Rs.1450-3710/- was treated initial pay scale of S.I. of police but the effect of Memo dated 07.11.1992 was given from 01.11.1992 and so, there was no wrong fixation of pay of the petitioner in the pay scale of Rs.1450-3710/- and that the petitioner was entitled to that pay scale w.e.f. 01.11.1992 and not from 02.12.1987. It is further contended by the respondents that it was not correct to say that the pay scale of Rs.1700-3980/- was revised to pay scale of Rs.7450-13000/- and in fact pay scale of Rs.1700-3980/- was revised to Rs.6500-10500/-, but the pay scale of Inspector of police was revised to Rs.7450-13500/- from the unrevised pay scale of Rs.1700-3980/-. It is further contended by the respondents that the pre-revised scale of Rs.1700-3980/- was meant for the post of Inspector of police having considered anomalous under TSCS ROP Rules 1988, the Pay Commission recommended the modified pre-revised scale of Rs.2000-4410/- under TSCS ROP Rules 1999 corresponding revised pay scale of

Rs.2000-4410/- was Rs.6500-12300/-. But the State Government considered it appropriate and allowed the upgraded higher scale of Rs.7450-13000/-. The petitioner was not holding the post of Inspector of police and so, he was not entitled to claim the higher scale admissible to the higher post of Inspector of police. The petitioner got the scale of Rs.1700-3980/- by virtue of completion of 10 years of service in the post and the higher pay scale got by an employee under CAS working in the lower rank cannot be treated as pay scale of his promotional post. There was specific direction for movement of next higher scale for both police and non-police personnel as per provision contained in Annexure-A of TSCS ROP Rules 1999. The petitioner cannot claim the scale of higher promotional post of Rs.7450-13000/- and that is not the graded scale of S.I. of police. In regard to the claim of CAS from 01.01.1999 the respondents contended that the petitioner was not entitled to get the revised scale of Rs.10000-15100/- since he has already availed second scale advancement as per 1988 pay revision and, therefore, not entitled to any further scale advancement as per ROP Rules 1999.

5. Learned counsel, Mr.Lodh has submitted that the case of the petitioner is well covered by the common judgment dated 10.01.2006 passed in RSA Nos.44 of 2003, 45 of 2003, 46 of 2003 and 47 of 2003. The plaintiffs of those cases and the petitioner are similarly situated and in that judgment the High Court clearly came to the conclusion that the plaintiffs were

entitled to the benefit claimed similar to that of the benefit claimed by the petitioner in this writ petition.

6. Learned Additional Government Advocate, Mr. Chakraborty, fairly conceded that the petitioner's case is covered by that judgment in the second appeal (Annexure-4 to the writ petition), but the said judgment has been challenged in the Supreme Court and so, the present petitioner cannot claim the similar benefit.

7. This writ petition was filed in the year 2006. The judgment in those second appeals (Annexure-4 to the writ petition) was passed on 10.01.2006. Though it is submitted by learned Addl. Government Advocate that judgment dated 10.01.2006 has been challenged in the Apex Court, but no scrap of paper is filed before this Court to show that any such appeal has been preferred before the Apex Court and the Apex Court has stayed the operation of that judgment. So, I have no hesitation to accept the argument of learned counsel, Mr. Lodh that the petitioner's case is covered by the judgment in the second appeal (Annexure-4 to the writ petition).

8. It is an admitted position that the petitioner was appointed as S.I. of police w.e.f. 02.12.1987 in the pay scale of Rs.560-1300/- and under ROP Rules 1988 that pay scale was revised to Rs.1300-3200/- and subsequently Finance Department by Memo dated 07.11.1992 revised the scale of Rs.1300-3200/- to Rs.1450-3710/- w.e.f. 01.11.1992. The petitioner, placing

reliance on Annexure-2, Notification dated 21.09.1995, claimed that to remove anomaly the revised scale of Rs.1450-3710/- was declared as the initial scale of S.I. of police under ROP Rules 1988, which came into effect from 01.01.1986. Though the respondents contended that the scale of Rs.1450-3710/- was given effect from 01.11.1992, but the respondents did not deny the existence of Annexure-2 under which the said pay scale of Rs.1450-3710/- was declared as the initial scale of S.I. of police with effect from the date of coming into force of ROP Rules 1988, i.e. 01.01.1986 and in view of that Notification since the petitioner was appointed on 02.12.1987, he was entitled to the said pay scale of Rs.1450-3710/- w.e.f. 02.12.1987 and he cannot be deprived from that pay scale.

9. It is also an admitted position that after completion of 10 years of continuous service without promotion, the petitioner was allowed graded scale of Rs.1700-3980/- and that pay scale was meant for the Inspector of police. Under ROP Rules 1999 the scale of Rs.1700-3980/- was revised to Rs.7450-13000/-. The petitioner since was already in the scale of Rs.1700-3980/-, he was entitled to the said revised scale of Rs.7450-13000/-. The respondents contended that the petitioner was not entitled to that scale since it was meant for Inspector of police, a promotional post and that the petitioner was entitled to the revised scale meant for the S.I. of police. I cannot agree with this contention of the respondents for the simple reason that since the petitioner

was already in the scale of Rs.1700-3980/- as per ROP Rules 1988 and after coming into force of ROP Rules 1999 that pay scale was revised to Rs.7450-13000/-, the petitioner was obviously entitled to that revised scale as per ROP Rules 1999.

10. In the judgment of the second appeals the Single Bench of the High Court clearly came to the conclusion that the plaintiffs-S.I. of police were entitled to that pay scale of Rs.7450-13000/- since they were in the pre-revised scale of Rs.1700-3980/-. I find total justification in the claim of the petitioner and the petitioner is entitled to that benefit.

11. The petitioner also claimed CAS as per Rule 10 of ROP Rules 1999 on his completion of 17 years of service in the same post without promotion. It is an admitted position that the petitioner did not get any promotion during his service career under the respondents. He got graded scale of higher post on his completion of 10 years of service. Thereafter since he did not get any promotion, there was no question of his movement to any higher scale. The respondents contended that under ROP Rules 1988 itself the petitioner got two scale advancement and, therefore, the petitioner was not entitled to CAS on his completion of 17 years of service.

12. No material is placed by the respondents to support their contention that the petitioner already got two scale movements under ROP Rules 1988 to disentitle him from the benefit of CAS prescribed under Rule 10 of ROP Rules 1999. In

my considered opinion, the petitioner is also entitled to CAS w.e.f. 02.12.2004, i.e. on his completion of 17 years of continuous service in the same post.

13. Learned Addl. Government Advocate, Mr. Chakraborty has submitted that claim of the petitioner is barred by the principles of delay and laches since the petitioner did not claim the benefit at the relevant point of time when the alleged cause of action arose and so, he is not entitled to this benefit. He has also submitted that the petitioner filed this writ petition after the judgment in the second appeal was passed and that judgment might have inspired the petitioner to file this writ petition and since he did not approach the Court in time, his claim should not be entertained at this belated stage.

14. Learned counsel, Mr. Lodh, on the other hand, has submitted that the petitioner from the date of his appointment has been serving in the same post and he has been deprived from the financial benefits, which were available as per Rules. Since the benefits were available as per Rules, but not given to the petitioner, his claim cannot be termed as barred by delay and laches.

15. The doctrine of laches is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with the lapse of time and other circumstances causing prejudice to adverse party, operates as bar in Court of equity.

16. It is a settled law that the rule which says that the Court may not enquire into belated and stale claim is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and, there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. Each case must depend on its own fact. There is no lower limit and also no upper limit to entertain or refuse a petition. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose.

17. There is no explanation on the part of the petitioner for such delayed approaching to the Court. But it is apparent that the legitimate due of the petitioner, accrued as per Rules, was not given to him. Therefore, though there is no explanation of the delay, I think it would be unjust to deprive the petitioner from the benefits claimed in the writ petition. Justice must be administered on the principles of equity, justice and good conscience. It should not be refused taking into account the technicalities. In the present case, the respondents did not grant/allow the benefits due to the petitioner as per Rules to which the petitioner was entitled and so, I think it is not an appropriate case to apply the principles of delay and laches and thereby to disentitle the petitioner from the benefits claimed.

18. The writ petition is accordingly allowed. The petitioner is entitled to the pay scale of Rs.1450-3710/- w.e.f. 02.12.1987 and he was also entitled to the pay scale of Rs.7450-

13000/- w.e.f. 02.12.1997 and further graded scale of Rs.10000-15100/- w.e.f. 02.12.2004. The respondents are directed to provide the benefits to the petitioner within 3(three) months from today.

19. Cost of the proceeding should be borne by both sides.

JUDGE