

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No. 106 of 2010

- 1. Shri Indrajit Deb,**
son of late Ramani Mohan Deb,
resident of Bordowali, P.S. West
Agartala, District- West Tripura.
- 2. Shri Subhas Chandra Saha,**
son of late Nityananda Saha,
resident of Town Pratapgarh,
P.S. East Agartala, West Tripura.
- 3. Shri Ratish Banik,**
son of late Umesh Chandra Banik,
resident of Dhaleswar, Near
Prachya Bharati School, P.S. East
Agartala, West Tripura.
- 4. Shri Hiranmoy Bagchi,**
son of late Hemendra Chandra
Bagchi, resident of Krishnangar
Nutan Pally, P.S. West Agartala,
West Tripura.
- 5. Shri Ranjit Das,**
son of late Kali Kumar Das,
resident of Gangail Road, P.O.
Ramnagar, P.S. West Agartala,
West Tripura.

..... Petitioners

- V e r s u s -

- 1. The State of Tripura,**
represented by the Chief Secretary
to the Government of Tripura,
Department of Finance, Civil
Secretariat, Agartala, West
Tripura.
- 2. The Joint Secretary,**
Government of Tripura,
Department of Finance, Civil
Secretariat, Agartala, West
Tripura.

3. **The Under Secretary,**
Government of Tripura,
Department of Finance, Civil
Secretariat, Agartala, West
Tripura.
4. **Tripura Road Transport Corporation,**
represented by the Managing
Director, Krishnangar, Agartala,
P.S. West Agartala, West Tripura.

..... Respondents

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioners : Mr. C.S. Sinha, Advocate.
For the respondents : Mr. P. Dutta, Advocate.

Date of hearing and delivery
of Judgment & Order : **12.01.2015**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

Heard Mr. C.S. Sinha, learned counsel appearing for the petitioners as well as Mr. S. Deb, learned senior counsel along with Mr. P. Dutta, learned counsel for the respondent No.4. None appears for the respondents No.1,2 &3 at the time of hearing.

[2] This case has a chequered past. The petitioners approached this Court earlier by filing a writ petition being W.P.(C) No.24 of 2003 which has been disposed by the judgment and order dated 04.08.2008. In that writ petition, the petitioners averred that the Tripura Road Transport Corporation,

the TRTC in short, was formed by an act called Tripura Road Transport Act, 1950. The petitioners claimed that the employees/workers of the TRTC were drawing the salary including the Dearness Allowance, the D.A in short, at par with the State Government employees. The petitioners in that writ petition had displayed a comparative table based on the various revisions of pay-scales starting from 1975 to 1999. The State Government by the memorandum dated 23.03.2001 released the D.A @10% of the basic pay in the revised pay scale to the State Government Employees w.e.f. 01.04.2001. Thereafter, the Finance Department issued another memorandum dated 19.12.2002 directing the different authorities of the different organisations as catalogued in the said memorandum including the TRTC *'to consider granting of further instalment DA to their employees @10% totalling 13% D.A. w.e.f. 01.01.2003. The Government of Tripura also issued another memorandum dated 19.12.2002 granting further instalment of DA @ 6% to the Government employees with effect from 01.01.2003.'*

[3] The grievance as canvassed in that writ petition was also that the Government did not direct the authorities to release the DA at par with the Government employees. According to the petitioners, that was brazen discrimination on the face of records. The petitioners in that writ petition made the following prayers:

(a) to sanction the 10% D.A. with effect from 01.04.2001 instead of 01.01.2003 as contained in Memorandum dated 19th Dec, 2002 (Annexure-8).

(b) to grant the further 6% (six percent) D.A. to the employees of the TRTC with effect from 01.01.2003 instead of 01.04.04 as given to the employees of the State Govt.;

(b)(i) to grant 7% D.A. with effect from 01.04.04 instated of 01.04.05.

(b)(iii) to grant 7% D.A. with effect from 01.04.05 instated of 01.09.06.

(b)(iii) to grant 7% D.A. with effect from 01.01.06 instated of 01.04.07.

(b)(iv) to grant the 5% enhanced D.A. with effect from 01.07.06 and 01.01.07 as granted to the employees of the Tripura Government.

(b) (v) to hold that the petitioners are entitled to get D.A. at the same rate as applicable to the State Govt. employees with effect from the same date as given to the employees of the State Govt.;

(c) to grant such further or other relief/reliefs as the Hon'ble High Court will deem fit and proper under the facts and circumstances of the case."

[4] The respondents had filed the separate counter affidavits. The respondent-TRTC in their counter affidavit stated that the employees of the TRTC are not treated at par with the Government employees in the matter of granting D.A. etc. However, the State Government exercises the financial control on certain matters of the TRTC. The State Government by filing a separate counter affidavit contended in that writ petition that there was no discrimination meted out to the employees of the PSUs and other Autonomous Bodies in respect of release of the DA, at least from 1991. So question of discrimination was far-fetched.

[5] On deliberating on the averments made in the writ petition, the counter affidavit and the records appended thereto, it has been observed in the said judgment and order dated 04.08.2008 passed in W.P.(C) No.24 of 2003 as under:

"20. It is true that the employees of the PSUs and other autonomous bodies under the Government of Tripura are not at par with the State Government employees. There is difference in status of service and service conditions etc. At the same time, it cannot be lost sight of the fact that they are the employees of State Government undertakings. It is the State Government under whose management and control, the Government undertakings run."

[6] Finally, this Court having relied to the decisions of the apex court of **State of H.P. vs. H.P. State Recognized & Aided Schools Managing Committees**, reported in **(1995) 4 SCC 507**, **State of Haryana vs. Rajpal Sharma**, reported in **(1996) 5 SCC 273** along with **Haryana State Adhyapak Sangh vs. State of Haryana**, reported in **(1990) Supp. SCC 306** and **Chandigarh Administration vs. Mrs. Rajni Vali**, reported in **AIR 2000 SC 634** directed as under:

For all the aforesaid reasons, I am of the considered opinion that the matter needs consideration of the respondent consistently with the observations made above. Accordingly, the writ petition is disposed of with the direction to the State Government to examine the grievance of the petitioners in the light of the observations made above and then to pass appropriate order in accordance with law. Needless to say that they will bear in mind that the employees of the PSUs etc. were all along treated at par with their counter parts in the State Government Departments in the matter of grant of DAs from time to time. They will also bear in mind that in the counter affidavits filed, there is no indication as to what led to the disparity making a grievance against which, the petitioners have invoked the writ jurisdiction of this Court.

[7] The said judgment and order dated 04.08.2008 passed by the learned Single Judge was called in question by the State-respondents by filing a Writ Appeal being W.A. No.03 of 2009. However, the said appeal was dismissed observing as under:

"5. It appears from the judgment and order dated 04.08.2008 impugned in the present appeal that while the learned Single Judge has narrated the case of the writ petitioners as well as the respondents in the judgment and has also referred to a number of decisions of the Apex Court relating to equal pay for equal work, no finding relating to the claim of the writ petitioners in the writ petition has been recorded. The learned Single Judge has only directed the State to examine the grievance of the writ petitioners in the light of the facts narrated as well as the decisions of the Apex Court referred to by the learned counsel for the parties.

6. Since no finding has been recorded by the learned Single Judge and no direction has also been issued to take a decision by the State Govt. in a particular way, in our considered opinion, no interference is called for. The State Government shall consider the claim of the writ petitioners in accordance with law and pass necessary orders in terms of the directions contained in the judgment and order dated 04.08.2008 impugned in the present appeal, within a period 3 months from today.

[Emphasis added]

[8] The Finance Department in pursuance to the judgment dated 04.08.2008 passed in W.P.(C) No. 24 of 2003 and the judgment and order dated 23.07.2009 passed in W.A. No.03 of 2009 passed an order after purportedly considering the relevant factors as would be apparent from the order dated 09.10.2009, Annexure-20 to the writ petition. The relevant part

of the said order for purpose of reference is extracted hereunder:

Since no finding has been recorded by the learned Single Judge and no direction has also been issued to take a decision by the State Govt. in a particular way, in our considered opinion, no interference is called for. The State Government shall consider the claim of the writ petitioners in accordance with law and pass necessary orders in terms of the directions contained in the judgment and order dated 04.08.2008 impugned in the present appeal, within a period 3 months from today.

In compliance of the above direction, related records in the matter have been examined carefully. On perusal of records it appears that the petitioners in their Writ petition had tried to give impression that the TRTC is a Government Department and accordingly its employees are supposed to get facilities like employees of the State Government. But such an impression is not based on reality. TRTC is completely a separate organization a corporation having its own Board of Directors. Recruitment Rules and other service conditions of the employees of the Corporation are determined by the TRTC Authority. State Government does not recruit any employee of the TRTC nor determine their service terms. Since the employees of the TRTC and other PSUs have their own distinct status, they are definitely not Government employees. It is further mentioned that all PSUs including TRTC are treated alike in respect of grant of DA and other allowances. Therefore, it is not arbitrary, discriminatory and violative of provisions of law in granting DA for the employees of TRTC and other PSUs.

[9] By the said order dated 09.10.2009 it has been observed that the claim of the petitioners is not justified.

Being aggrieved by that order, this petition has been filed by the petitioners again seeking the similar reliefs.

[10] Mr. C.S. Sinha, learned counsel appearing for the petitioners has submitted that the petitioners used to be treated at par with the State Government employees. Mr. Sinha, learned counsel has further submitted that after the Tripura

State Civil Services (Revised Pay) Rules, 1999 was introduced, the Finance Department has delinked the pay and other benefits payable to the employees of Public Sector Autonomous Bodies including the TRTC from the State Government employees. There had been no reason whatsoever given for treating the employees of Public Sector Undertakings differently. The classification is neither informed with reasons nor intelligible. He has further submitted that from the various orders it would be apparent that on the same day both the State Government employees and the employees of the public sector undertaking were given the benefit by release of the D.A. But their percentage was different and less which caused serious deprivation. For example, Mr. Sinha, learned counsel has drawn attention of this Court to the memorandum F.6(5)-FIN(PC)/99 dated 10.08.2009, Annexure – 19 to the writ petition. He has further submitted that the State Government cannot absolve its responsibility from giving fair and decent financial benefits to the employees of the public sector undertakings. The impugned order is anathema to that concept and as such, the said order is required to be interfered with. Mr. Sinha, learned counsel on the last lap of his submission has submitted that by the judgment and order dated 04.08.2008, the learned Single Judge had observed certain important factors to bode comparison of the benefits between the two categories of employees working in the Government sector and non-Government sector/semi

Government sector and directed the respondents No.1 and 2 to take consideration on that aspect. The respondents No.1,2 & 3 preferred an appeal against the said judgment of the learned Single Judge, but did not succeed. As such, those parameters as set up by the learned Single Judge became binding on the respondents No.1,2 & 3.

[11] While refuting the submissions of Mr. Sinha, learned counsel appearing for the petitioners Mr. Deb, learned senior counsel appearing for the TRTC-respondent has submitted that the respondents No.1,2, & 3 by filing the counter affidavit have categorically stated at Para-10 as under:

10. With regard to the statements made in sub-paragraphs (iv), (v), (vi), (vii), (viii), (ix) and (x) of paragraph 2 of the writ petition, the answering respondents state the factual position as revealed from records as follows:

After the introduction of the revised pay structure in respect of PSUs and Autonomous Bodies in 1999, 32% D.A. on revised basic pay had been granted, till 01.01.2003	State Government employees have been granted 38% D.A.
13% D.A. w.e.f. 01.01.1999 9% D.A. w.e.f. 01.01.2000 10% D.A. w.e.f. 01.01.2003	8% D.A. w.e.f. 01.01.1998 5% D.A. w.e.f. 01.01.1999 9% D.A. w.e.f. 01.01.2000 10% D.A. w.e.f. 01.04.2001 6% D.A. w.e.f. 01.01.2003

From a perusal of the above comparative statement, it is crystal clear that the employees of the PSUs including TRTC have always been differently treated qua the employees of the State Government both in respect of the introduction of the revision of pay as well as the grant of DAs. The State respondents have also kept in mind the various economic aspects in the matter of the introduction of the revision of pay rules as well as

the grant of DAs from time to time. It is further stated that in the matter of the grant of DA, the TRTC being an industrial unit, it is not axiomatic that the DAs grant to the employees of the State Government shall also be the DAs to be granted to the employees of the TRTC. The petitioners have tried to make out simile with respect to some of the other institutions being oblivious that they are not industrial units.

[12] The petitioners had not controverted those averments. Mr. Deb, learned senior counsel has stated that the petitioners in the earlier writ petition had also asked for the same reliefs but those were not granted. Only direction that was issued was for consideration of their prayer by the State Government as this Hon'ble Court was completely conscious on the jurisdictional limit as to issuance of the direction to grant financial benefits in a particular manner or mode. He has further submitted that by filing the counter affidavit, the respondents No.1,2 & 3 had categorically stated that the service conditions of the employees of the TRTC are different from those of the employees of the State Government and the learned Single Judge passed the judgment dated 04.08.2008 having regard to that aspect. Mr. Deb, learned senior counsel has further submitted that the judgment dated 23.07.2009 passed in Writ Appeal No.03 of 2009 has explained, to some extent, that the direction issued by the learned Single Judge has to be understood in that perspective that the claim of the petitioners should be considered and the respondents No.1,2 & 3 shall pass the necessary order in accordance with law. The impugned order has been passed in terms of the judgment as stated. Mr.

Deb, learned senior counsel has further submitted that the State Government is within its competence to adopt the policy for different categories of the employees unless such policy suffers from vice of arbitrariness or it does come in conflict with the provisions relating to the fundamental rights in Chapter-III of the Constitution of India. Usually this Court shall be loath in interfering with such policy. He has finally submitted that the petitioners have failed to show by placing the relevant materials that the employees of the TRTC stand at par with the similar categories of employees of the State Government.

[13] While appreciating the rival submissions made by the learned counsel appearing for the parties, this Court is confronted with 2(two) fundamental questions viz.

(i) Whether the Court can direct the State Government to grant the certain financial benefits including the DA to a categories of employees who are working in the Public Sector Undertakings alike the TRTC in a particular manner and

(ii) Whether while issuing the impugned order dated 09.10.2009, Annexure-20 to the writ petition, the respondents No.1 and 2 had failed to consider the observation and direction made in the judgment dated 04.08.2008 passed in W.P.(C) No.24 of 2003 or in the judgment dated 23.07.2009 in WA No.03 of 2009?

There cannot be any amount of doubt unless such materials are placed before this Court to demonstrate that the employees of two different sectors are situated alike in terms of their conditions of employment, the duties and responsibilities in the hierarchy, the Court would definitely not engage in a roving inquiry for purpose of directing the State Government to treat a category of employees with the another or for directing them to grant some benefits in a particular manner etc. It remains within the policy domain of the State Government. Unless those policies are found contrary to the constitutional principles, the Court shall not interfere with the said policy.

[14] The remaining question that falls for consideration by this Court is whether the order dated 09.10.2009 has been passed in breach of the observation or the direction made in the judgment dated 04.08.2008 or in the judgment dated 23.07.2009 respectively delivered in W.P.(C) No.24 of 2003 and W.A. No.03 of 2009. It is true that in the order there appears no exercise to give reasons why the two categories of employees are treated differently but it has been stated that the TRTC is completely a separate organization, a corporation having its own Board of Directors, Recruitment Rules and other asymmetrical service conditions. The State Government does not recruit any employee of the TRTC nor determine their service conditions. Since the employees of the TRTC and other

PSUs have their own distinct status, they are definitely not Government employees. It is further mentioned that all PSUs including the TRTC are treated alike in respect of grant of the DA and other allowances. Therefore, it is not arbitrary, discriminatory and violative of provisions of law for granting the DA for the employees of TRTC and other PSUs differently. Even though the statement of reasons is very cryptic but there is semblance of certain analogy, why the employees working under the TRTC are treated differently. Whether the employees who are working under the PSUs and the employees of the State Government are to be entitled to the same financial benefits or not? It depends on so many fiscal logics. This Court is not competent to delve into that paradigm. It is upon the State Government to determine. If someone is aggrieved by any policy determination which is not otherwise in conflict with the constitutional principles they may file representation, for mitigating their grievance, to the competent authority in the State Government.

[15] Having held so, this Court does not find any merit in this writ petition. Accordingly, this writ petition stands dismissed.

However, there shall be no order as to costs.

JUDGE

Sujay