

**THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) NO. 258 of 2010

Shri Pranabendu Bikash Chakraborty,
S/O. Late Barindra Mohan Chakraborty,
resident of Palace Compound,
P.O. Agartala, P.S. East Agartala,
District-West Tripura,

..... Petitioner.

- Versus -

1. The State of Tripura,
represented by the Principal Secretary,
Health & Family Welfare Department,
Government of Tripura,
Government Secretariat,
New Capital Complex,
P.O. Kunjaban, P.S. East Agartala,
Tripura West, Pin-799006.

2. The Principal Secretary,
Finance Department,
Government of Tripura,
Government Secretariat,
New Capital Complex,
P.O. Kunjaban, P.S. East Agartala,
Tripura West, Pin-799006.

3. The Director of Health & Family Welfare,
Government of Tripura,
Pandit Jaharlal Nehru Complex,
P.O. Kunjaban, P.S. West Agartala,
Tripura West.

..... Respondents.

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

For the petitioner	: Mr. C. S. Sinha, Mr. D. C. Saha, Advocates,
For the respondents	: Mr. S. Chakraborty, Additional Govt. Advocate.
Date of hearing	: 30.03.2015.
Date of delivery of Judgment and Order	: 20.04.2015.
Whether fit for reporting	: Yes.

JUDGEMENT AND ORDER

Petitioner, a science graduate and diploma in hearing language and speech, was first appointed in the Health & Family Welfare Department of the Government of Tripura as an Audiometry Technician by an order dated 30.08.1990 (Annexure-1 to the writ petition) for a period of six months at a consolidated salary of Rs.1,000/- per month and his such appointment was extended time to time. While was in service, he was sent for training in speech and audiology and thereafter by order dated 04.10.1993 (Annexure-3 to the writ petition) his service was regularized and a regular pay scale of Rs.1300-3220/- was allowed to him w.e.f. 06.08.1993. It is an admitted position that the petitioner was appointed as an Audiometry Technician on regular pay scale after revision of pay rules, 1988 of the Government of Tripura was implemented and so, the pay scale was not tested by any Pay Commission.

2. The 4th Tripura Pay Commission, 1996 was constituted by the Government of Tripura and the Commission submitted its recommendation on 29.06.1998. A Pay Anomaly Committee was constituted, wherein the pay of the Audiometry Technician was also taken up and the Anomaly Committee submitted its report recommending pay scale of Rs.1700-3980/- for the post of Audiometry Technician. The Anomaly Committee considered that the post of Audiometry Technician is an equivalent post as that of Ophthalmic Assistant in terms of Recruitment Rules. It is the

contention of the petitioner that the State-respondent was supposed to implement the recommendation of the Anomaly Committee (Annexure-5 to the writ petition), but when Revision of Pay Rules, 1999 (for short 'ROP Rules 1999') came into effect w.e.f. 01.01.1996, the petitioner found that the post of Audiometry Technician was missing in the ROP Rules 1999. He made representation to respondent No.3 for providing him the pay scale as per the recommendation of 4th Tripura Pay Commission and thereafter the respondents made an amendment in the ROP Rules 1999 vide 15th Amendment Rule 2004 (Annexure-7 to the writ petition) and allowed revised pay scale of Rs.4200-8650/-, corresponding to pre-revised scale of Rs.1300-3220/-.

3. The petitioner felt aggrieved and submitted representation one after another, which is reflected in his representation dated 28.05.2005 (Annexure-8 to the writ petition) and thereafter the respondent No.3 came out with Memo dated 18.08.2005 (Annexure-9 to the writ petition) rejecting the representation of the petitioner summarily. The petitioner challenged Annexure-9 as well as Annexure-7 to the writ petition contending that the post of Audiometry Technician is equivalent to the post of Ophthalmic Assistant, which was observed by the 4th Tripura Pay Commission and while Ophthalmic Assistant has been provided the pay scale of Rs.1700-3980/- and corresponding revised pay scale of Rs.5500-10700/-, he is also entitled to the said pay scale from 01.01.1996.

4. Respondents contended that the post of Audiometry Technician and the post of Ophthalmic Assistant are different and both the posts are not similarly situated and so, the petitioner is not entitled to the same pay scale as that of the Ophthalmic Assistant. A copy of the ROR of Ophthalmic Assistant has been annexed as Annexure-R/1. It is also contended by the respondents that the representation of the petitioner was duly considered by respondent No.3 and it was rightly rejected by Memo dated 18.08.2005 (Annexure-9 to the writ petition) and there is nothing wrong in the action taken by the respondents.

5. In course of hearing, learned counsel, Mr. C. S. Sinha for the petitioner contended that it is an admitted position that the petitioner was appointed on regular basis w.e.f. 06.08.1993 providing a regular pay scale of Rs.1300-3220/- after ROP Rules 1988 was given effect and, therefore, there was no scope for testing the pay scale of the petitioner by an expert body like Pay Commission. He has also submitted that the respondents also admitted that there was no Recruitment Rules for the post of Audiometry Technician prescribing particular pay scale at the time when the petitioner was appointed. According to Mr. Sinha, on the prayer of the petitioner and others, the Anomaly Committee of 4th Tripura Pay Commission considered the case of the petitioner and similarly situated other employees and the Anomaly Committee submitted its report (Annexure-5 to the writ petition) recommending pay scale of Rs.1700-3980/- for the post of Audiometry Technician and the Committee considering all service

rules held that the posts of Audiometry Technician and Ophthalmic Assistant were similar posts and, therefore, same pay scale was considered. Mr. Sinha contended that when ROP Rules 1999 came into force the petitioner found that his post was not mentioned and he made representation after representation and only thereafter by amending ROP Rules 1999, 15th Amendment Rule of 2004 (Annexure-7 to the writ petition) vide Annexure-2 to the Amendment Rule at Page-62, Sl. No.61, the existing pay scale of the Audiometry Technician was shown as Rs.1300-3220/-, revised scale w.e.f. 01.01.1996 was shown as Rs.4200-8650/-. According to Mr. Sinha, it was a clear deprivation of the petitioner from the legitimate claim and no reason assigned as to why the recommendation of the Anomaly Committee was not exceeded to.

6. Learned Additional Government Advocate has submitted that there was no Recruitment Rules for the post of Audiometry Technician and the petitioner accepted the pay scale of Rs.1300-3220/- w.e.f. 06.08.1993. He has also contended that recommendation of the Anomaly Committee was not binding on the State-respondents and, therefore, allowing him revised scale of Rs.4200-8650/- cannot be said to be illegal.

7. It is an admitted position that there was no Recruitment Rules for the post of Audiometry Technician on the date of appointment of the petitioner on a regular basis w.e.f. 06.08.1993. It is also an admitted position that there was an Anomaly Committee constituted by the State Government and the

Anomaly Committee of 4th Tripura Pay Commission submitted its recommendation, which is marked as Exbt.-5. In its recommendation, the Anomaly Committee observed :-

"ii) In case of recruitment to the post of Audiometry Technician, the minimum recruitment qualification is HS (+2 stage) plus Diploma in Audiometry; whereas, in case of Physiotherapist it is HS (+2 stage) plus Diploma/Degree in Physiotherapy and six-month internship; and in case of Ophthalmic Assistant the requirements are HS (+2 stage) plus two years training.

So, from the RRs it appears that the recruitment requirements for the post of Physiotherapist are more stringent than those for the posts of Audiometry Technician and Ophthalmic Assistant. But there is an equivalence between the posts of Audiometry Technician and the Ophthalmic Assistant in terms of RR.

Hence, the Commission feels that the post of Audiometry Technician be allowed the scale of pay identical to that of Ophthalmic Assistant and there is no necessity for re-designating the post as proposed."

The Committee with the above observation recommended the pay scale of Rs.1700-3980/- to the post of Audiometry Technician. It is, therefore, evident that the Committee found the post of Audiometry Technician at par with Ophthalmic Assistant in terms of Recruitment Rules.

8. The respondents placed on record the Recruitment Rules of Ophthalmic Assistant (Annexure-R/1 to the counter affidavit), which prescribes the educational qualification for the post; (i) HS (+2 stage) with science and (ii) Ophthalmic Assistant course trained from any recognised Institute of India.

9. It is not disputed that the petitioner is a science graduate with diploma in hearing language and speech and it is also an admitted position that the petitioner undergone training in speech and audiology from All India Institute of Medical Science, New Delhi and thereafter he was posted as Audiometry Technician with regular pay scale w.e.f. 06.08.1993. I am, therefore, of considered opinion that the Pay Commission rightly observed that the post of Audiometry Technician and Ophthalmic Assistant are similarly situated. In the Recruitment Rules of Ophthalmic Assistant (Annexure-R/1 to the counter affidavit) the pay scale prescribed for the post was Rs.1700-3980/-. The 4th Tripura Pay Commission considered that Recruitment Rules of Ophthalmic Assistant and since it found that the post of Audiometry Technician also similarly situated it recommended the same pay scale for the post of Audiometry Technician, i.e. Rs.1700-3980/-.

10. Nothing is placed on record by the respondents as to why the recommendation of 4th Tripura Pay Commission in respect of pay anomaly was not implemented while publishing ROP Rules 1999. No doubt the Commission's report is not automatically binding upon the State Government unless it is accepted by the State Government. The petitioner submitted representation when he found that the post of Audiometry Technician was not included in ROP Rules 1999. Thereafter by 15th Amendment Rule 2004 (Annexure-7 to the writ petition) ROP Rules 1999 was amended and in Annexure-2 the Audiometry Technician was included showing existing pay scale of Rs.1300-3220/- and revised pay

scale w.e.f. 01.01.1996 Rs.4200-8650/-. No reason has been assigned by the respondents as to why the petitioner was not given the pay scale of Rs.1700-3980/- as per recommendation of the 4th Tripura Pay Commission though his post is found to be equivalent to the post of Ophthalmic Assistant. The stand of the respondents that the posts of Audiometry Technician and Ophthalmic Assistant are not similarly situated cannot be accepted since it is apparently found that both the posts were similarly situated and the Pay Commission, therefore, rightly considered those posts as equivalent posts under the same department.

11. After 15th Amendment Rule of 2004 was given effect, the petitioner again submitted his representation claiming the pay scale of Rs.5500-10500/- which is the revised pay scale of Rs.1700-3980/-. That was turned down by respondent No.3 by Memo dated 18.08.2005 (Annexure-9 to the writ petition) without assigning any reason. It is quite clear that Annexure-9 was issued turning down the representation of the petitioner without assigning any reason and hence, the Memo cannot stand in the eye of law.

12. It is argued by learned Additional Government Advocate, Mr. Chakraborty that the claim of the petitioner is barred by delay and laches since he did not approach the Court immediately after Memo dated 18.08.2005 (Annexure-9 to the writ petition) was issued and, therefore, the petitioner at this

belated stage is not entitled to any relief regarding any pay anomaly at the time of 4th Tripura Pay Commission.

13. Learned counsel, Mr. Sinha has submitted that even after issuance of Memo dated 18.08.2005, the petitioner submitted representation and the last representation was on 04.10.2008 (Annexure-10 to the writ petition). The petitioner consistently approached the respondents for his legitimate claim and the claim cannot be said to be barred by delay and laches. He has also contended that there is no such plea taken by the respondents in their counter affidavit that the writ petition is barred by delay and laches and, therefore, the submission of learned Additional Government Advocate should not be accepted.

14. 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 a neglect to assert a right or claim which, taken together with the lapse of time and other circumstances causing prejudice to the adverse party, operates as barred in Court of equity.

15. In the case at hand, it is brought on record that the petitioner exerting his claim from the time 4th Tripura Pay Commission was constituted by the State respondents. After 15th Amendment of ROP Rules 1999, the petitioner made representation after representation and ultimately by Memo dated 18.08.2005 his claim of the pay scale of Rs.1700-3980/- was turned down without assigning any reason. Annexure-10 shows

that thereafter also he continued his representation and Annexure-10 is a representation dated 04.10.2008. The petitioner filed the writ petition in the year 2010 alleging continuous deprivation of legitimate pay scale due to him. To apply the doctrine of delay and laches, the respondent has to show that grant of the relief claimed by the plaintiff will cause prejudice to the respondent in any manner. Therefore, to my anxious consideration, the writ Court should not throw out the petition on the ground of delay and laches, but this Court must administer justice in accordance with law and principles of equity, justice and good conscience. It will be unjust to deprive the petitioner of the rights, which are accrued to him at the time when 4th Tripura Pay Commission was constituted and recommended a particular pay scale for the Audiometry Technician, the post, which the petitioner was holding.

16. In the case of **Ramchandra Shankar Deodhar & ors. V. The State of Maharashtra & ors.**, reported in **(1974) 1 SCC 317**, the Supreme Court in para 10 of the judgment has observed :-

"..... There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Art. 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims 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 facts....."

17. Taking a cue from the above observation of the Apex Court, I am of the considered opinion that this Court should not reject the case of the petitioner simply on the ground of delay and laches where it is found that the petitioner was deliberately deprived of his legitimate right without any reason and where the respondents will not be adversely affected. If the reliefs granted, the petitioner will be entitled to his legitimate claim and that will cause no prejudice to the respondents.

18. In view of the discussion made above, I have no hesitation to come to the conclusion that the post of Audiometry Technician and the post of Ophthalmic Assistant were similarly situated as recommended by 4th Tripura Pay Commission in its recommendation on the reported cases of anomalies and according to that recommendation the petitioner was entitled to the pay scale of Rs.1700-3980/-, but the claim of the petitioner that he should be given the said pay scale w.e.f. 06.08.1993 cannot be accepted since it was a recommendation of the Anomaly Committee and as per that recommendation he will be entitled to the corresponding pay scale as per ROP Rules 1999 and so, the petitioner will be entitled to the corresponding pay scale of Rs.5500-10700/- w.e.f. 01.01.1996. To that extent the Notification dated 17.11.2004 (Annexure-7 to the writ petition) is interfered and Memo dated 18.08.2005 (Annexure-9 to the writ petition) is set aside. The respondents are directed to give the

benefit of pay scale of Rs.5500-10700/- to the petitioner w.e.f. 01.01.1996 and the order should be complied within three months from today.

19. With the above observation and direction, the writ petition stands disposed of. Parties are to bear their own costs.

JUDGE