

**THE HIGH COURT OF TRIPURA
AGARTALA**

W. P.(C) No.369 of 2008

1. Shri Gopal Chandra Majumder,
son of Satindra Kr. Majumder,
Resident of Village – Madhab Nagar,
P.S. Sabroom, District – South Tripura
2. Shri Mridul Dey,
son of late Parimal Dey,
P.O. Sabroom (Notified Area)
P.S. Sabroom, District – South Tripura

.....Petitioners

- Vs -

1. The State of Tripura,
Represented by the Secretary-cum-Commissioner,
Urban Development Department,
Government of Tripura,
Secretariat Complex, Agartala, West Tripura
2. The Secretary-cum-Commissioner,
Urban Development Department,
Government of Tripura,
Secretariat Complex, Agartala, West Tripura
3. The Director,
Urban Development Department,
Government of Tripura,
Office of the Director of
Urban Development Department,
Agartala, West Tripura.
4. The Secretary-cum-Commissioner,
Finance Department,
Government of Tripura,
Secretariat Complex, Agartala, West Tripura
5. The Executive Officer,
Sabroom Nagar Panchayat,
Sabroom, South Tripura.

.....Respondents

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioners	: Mr. D. C. Saha, Advocate
For the respondent Nos.1, 2, 3 & 4	: Mr. B. Dutta, Advocate
For the respondent No.5	: Mr. T. D. Majumder, Advocate
Date of hearing and Delivery Judgment and order	: 21.01.2015
Whether fit for reporting	: NO

Judgment and Order (Oral)

Heard Mr. D. C. Saha, learned counsel appearing for the petitioners as well as Mr. B. Dutta, learned counsel appearing for the respondent Nos.1, 2, 3 & 4 and Mr. T. D. Majumder, learned counsel appearing for the respondent No.5.

02. By means of this writ petition, the petitioners have challenged the memorandum No.F.1(15)-SBM/NP/ESTT/96/368-70 dated 10.02.2005, issued by the Executive Officer, Sabroom Nagar Panchayat, Sabroom, South Tripura, the memorandum No.F.1(15)-SBM/NP/ESTT/96/1583-85 dated 16.06.2005, issued by the Executive Officer, Sabroom Nagar Panchayat, Sabroom, South Tripura, the memorandum No.F.1(308)-VOL-II/DI/SBM/NP/2012/1(81)-85, dated 29.06.2013, issued by the Executive Officer, Sabroom Nagar Panchayat, Sabroom, South Tripura, letter No.F.1(23)/UDD/DUD/2012/2066 dated 13-06-2013 couched with the prayer for Mandamus for treating the petitioner No.1 appointed in the post of the UDC regularly w.e.f. 01.01.1990 with all consequential and ancillary benefits and treating the petitioner No.2 in the post of the Science Assistant under the Sabroom Nagar Panchayat w.e.f. 19.09.1987 regularly with all consequential and ancillary benefits. It has been further prayed for quashing/ cancelling the memorandum No.F.1(308)-VOL-II/DI/SBM/NP/2012/1072-77, dated 29.06.2013 issued by the Executive Officer, Sabroom Nagar Panchayat.

03. The undisputed fact as appears from the record is that the petitioner No.1, Sri Gopal Chandra Majumder was appointed as

the LDC-cum-Typist by the letter of appointment dated 13.03.1987, Annexure-B to the writ petition in the scale of pay of Rs.430-850/-. Thereafter, his scale of pay was revised from time to time. By the order dated 15.09.1990 the Member Secretary, Notified Area Authority, Sabroom passed the following order:

"The Notified Area Authority, Sabroom has been pleased to promote Sri Gopal Chandra Majumder, L.D. Clerk of this office to the Post of U.D. Clerk in the Scale of Pay Rs.1250-45-1610-50-2016-55-2890/- with admissible allowances as like the regular employees of this Notified Area Authority, Sabroom w.e.f. 1st October 1990.

His pay is to be fixed as per normal rules of F.R. and his promotion will be treated as purely temporary. The expenditure is debitable to the head of A/C 2217 P.L A/C, Non-Plan against the grant sanctioned in favour of the Notified Area Authority, Sabroom."

The said letter dated 15.09.1990 is appended with the affidavit filed by the petitioner on 20.01.2015.

04. The petitioner No.2, Sri Mridul Dey was appointed as the Science Assistant under the Notified Area Authority, now Sabroom Nagar Panchayat, on the fixed pay basis by the memorandum dated 18.09.1987. Thereafter, by the order dated 15.09.1988 he was given the regular scale of pay of Rs.560-1300, Annexure-H to the writ petition. The said order is extracted for reference:

"The Notified Area Authority, Sabroom has pleased to provide the regular scale of pay Rs.560-25-710-30-60-40-1300 to Sri Mridul Dey existing Science Asstt. with retrospective effect from 14th Sept. 1988 with admissible allowances as like the regular employees of the Notified Area Authority, Sabroom.

His pay is to be fixed as per normal Rules of F.R. and the order will be treated as purely temporary till 31-3-1988."

05. The petitioners were getting their respective salary on the basis of the order dated 15.09.1990 uninterruptedly till February 10, 2005 when the memorandum in the form of a show cause, Annexure-I to the writ petition, was issued. From the said memorandum, it appears that since the appointment of the petitioner No.1 to the post of the UDC and the grant of the regular pay scale to the petitioner No.2 was done irregularly, they would be liable to recovery of excess payment and stoppage of annual increment. In the form of the said memorandum, the petitioners were asked to show cause why such excess payment that has been made for irregular appointments will not be recovered from them in such instalments as may be decided in the due course.

06. Both the petitioners have asserted their respective cases by filing the representations. In short, they submitted that by the order of the competent authority they had been receiving the pay scale, increment etc. and as such, they cannot be faulted for such excess payment, if any. They asked for maintaining their position without any alteration. However, by the memorandum dated 16.06.2005, Annexure-L to the writ petition, the Executive Officer, Sabroom Nagar Panchayat communicated the decision in this regard as follows:

"Now therefore, it has been decided that the written submissions of Sri Gopal Ch. Majumder, UDC, Sabroom Nagar Panchayat, and Sri Mridul Dey, Science Assistant, Sabroom Nagar Panchayat, would be forwarded to the Urban Development Department, Government of Tripura, and pending a decision/instruction from the Department on the issue, status quo would be maintained in terms of their present monthly salary, without prejudice, however, to any future course of action that may be taken to bring into effect, from retrospective date if

necessary, the relevant provisions of the aforesaid Memorandum of the Finance Department, Government of Tripura.

Further, till such time as the matter is finally settled, any increment or gradation otherwise due to Sri Majumder and Sri Dey, or any additional instalment of dearness allowance otherwise admissible, would be kept in abeyance."

07. It is apparent that no immediate action, adverse to the petitioners, was taken by the Sabroom Nagar Panchayat, rather they have referred the matter for consideration of the Finance Department, Government of Tripura. However, it has been communicated that till such decision from the Finance Department is available, any increment or gradation otherwise due to the petitioners or any additional instalments of the dearness allowance otherwise admissible would be kept in abeyance. After such order both the petitioners were asked for the release of their periodical increments. On 29.06.2013, by a memorandum the following decision was communicated.

"After proper scrutiny, the pay of Sri Gopal Chandra Majumder be continued as LDC with effect from 13.03.1987, in the scale of Rs.430-15-580-20-600-25-850/- with all admissible allowances. The pay of Sri Majumder will be regulated from 13.03.1987 as detailed below:

As on 13.03.87 -Rs.430/- (430-850/-)

As on 13.03.87 -Rs.970/- (970-2400)

It is regulated up to 12-03-1997 and after completion of 10 yrs. Satisfactory Service of regular post the pay will be fixed at Rs.1395/- on 13.03.1997 and then it would be Rs.3900/- in the scale of (Rs.3300-7100) as per ROP – 1999 and thereafter it would be re-fixed to Rs.4,110/- (in the scale of Rs.4000-7890/-)

After completion of 17 years satisfactory service on regular post the pay will be re-fixed to Rs.4,920/- on 13.03.2007 as per F.R.22(a)(ii) in CAS-II with DNI – 01-03-2005.

And as per ROP, 2009, the pay of Sri Majumder will be fixed at Rs.11,700/- and it would be regulated as per orms. His pay will be reached at Rs.14,140/- in the Pay Band-II on 01.07.2012.

Sri Majumder is allowed CAS/ACP as per ROP Rules, 1999 and ROP Rules, 2009 (6th Amendment). An arrear pay will be allowed through a Due-drawn statement w.e.f. 01.10.90 (from the date of promotion which was cancelled) as Typist cum L.D. Clerk.”

08. It further appears that by the memorandum dated 29.05.2013, Annexure-P/P to the writ petition, that the petitioner No.1 has been regularly appointed to the post of the UDC in the pay scale of Rs.5310-24000/- under Pay Band No.2 with Grade Pay Rs.2100/- along with admissible allowances. It is to be mentioned that the petitioner No.1 has also challenged the memorandum promoting him regularly to the post of the UDC. Further by the memorandum dated 29.05.2013 the pay of the petitioner has been readjusted in terms of the ROP Rules 2009 and the ROP Rules (Sixth Amendment) Rules, 2012 in the following manner:

"Accordingly, Pay of Sri Majumder, UDC has been fixed as follows in pursuance of TSCS (Revised Pay) Rules, 2009 and TSCS (Revised Pay) (Sixth Amendment) Rules, 2012 w.e.f. the date of providing regular pay scale i.e. w.e.f. 01.11.2007 under Pay Band Scale of Rs.5310-24000/- (PB-2) with grade pay of Rs.2100/- considering the grade of the incumbent concerned (in the post of UDC).

As per TSCS(RP) Rules, 2009			As per TSCS(RP)(Sixth Amendment) Rules, 2012	
1	Entry level pay as on 01-11-2007 Rs.7310+2100)(Notional fixation)	Rs.9,410/-	Entry level pay as on 01-11-2007 Rs.7820+2100)(Notional Fixation)	Rs.9,920/-
2	Pay as on 01-07-2008 (Notional fixation)	Rs.9,650/-	Pay as on 01-07-2008 (Notional Fixation)	Rs.10,170/-
3	Pay as on 01-01-2009 (Cash benefit)	Rs.9,650/-	Pay as on 01-07-2009 (Notional Fixation)	Rs.10,430/-
4	Pay as on 01-07-2009 (Cash benefit)	Rs.9,900/-	Pay as on 01-07-2010 (Notional Fixation)	Rs.10,750/-
5	Pay as on 01-07-2010 (Cash benefit)	Rs.10,200/-	Pay as on 01-07-2011 (Notional Fixation)	Rs.11,080/-

6	Pay as on 01-07-2011 (Cash benefit)	Rs.10,510/-	Pay as on 01-07-2012 (Notional Fixation)	Rs.11,420/-
7	Pay as on 01-07-2012 (Cash benefit)	Rs.10,830/-	Pay as on 01-12-2012 (Cash benefit)	Rs.11,420/-
8	Date of next increment	01-07-2013	Date of next increment	01-07-2013

IPS should be prepared accordingly and adduced with the service book of the incumbent concerned. The Contents of the said Memo should be recorded in the service book of Sri Majumder, UDC"

09. The petitioner has accepted that fixation, as reflected in the memorandum dated 29.05.2013, by a communication dated 30.05.2013 under protest till finalisation by the Nodal Department. Thereafter, by a communication dated 13.06.2013, Annexure-P/T to the writ petition, the Director, Urban Development Department has communicated as under:

"In inviting a reference to the subject cited above, I would like to inform you that Sri Gopal Chandra Majumder had been appointed as LDC on 13.3.87 and subsequently he was promoted to the post of UDC w.e.f. 1.10.1990 vide NO.35(5)-NA/SBM/90/498 dated 15.9.1990 on completion of 3 years 6 months. It may be mentioned here that there is no sanctioned post of UDC in Nagar Panchayat.

It is not clear as to how Sri Majumder has been promoted to non sanctioned post of UDC. It is also not clear as to how his pay has been fixed in regular pay scale of Rs.5310-24000/- Grade pay –Rs.2100/- w.e.f. 1.11.2007.

It may be mentioned here that the focus of the Government was to regularize the service of DRW/Contingent/Casual workers who had completed 15 years of service but not for the employees who were already in regular pay scale. The promotion of Sri Gopal Majumder to the post of UDC is highly irregular as there is no post of UDC in Nagar Panchayat, which deserves cancellation. Sri Majumder may be allowed the CAS/ACP as LDC as per ROP Rules, 1999 and 2009 if eligible.

In view of the above, I am directed to request you to cancel the promotion order issued vide NO.35(5)-NA/SBM/90/498 dated 15.9.1990 and F.1(308)-VOL-II/DI/SBM/NP/2012/1120-26 dated 29.05.2013...Sri

Majumder may be allowed CAS/ACP as per ROP Rules, 1999 and 2009.

Action taken may please be intimated.”

10. The petitioner No.2 was regularly appointed in the post of the Science Assistant in the pay scale of Rs.5110-24000/- under pay band-2 with grade pay of Rs.2200/- along with all other admissible allowances in terms of the policy of the Government of Tripura as declared by the Finance Department Memorandum No.F.10(6)-FIN(G)/2007 dated 07.11.2007. Thereafter his pay has been fixed in terms of the ROP Rules, 1999 read with ROP Rules, 6th Amendment Rules, 2012 in the following manner:

"Accordingly, Pay of Sri Dey, Science Asstt. has been fixed as follows in pursuance of TSCS (Revised Pay) Rules, 2009 and TSCS (Revised Pay) (Sixth Amendment) Rules, 2012 w.e.f. the date of providing regular pay scale i.e. w.e.f. 01.11.2007 under Pay Band Scale of Rs.5310-24000/- (PB-2) with grade pay of Rs.2100/- considering the grade of the incumbent concerned (in the post of Science Assistant).

As per TSCS(RP) Rules, 2009			As per TSCS(RP)(Sixth Amendment) Rules, 2012	
1	Entry level pay as on 01-11-2007 Rs.7310+2100)(Notional fixation)	Rs.9,410/-	Entry level pay as on 01-11-2007 Rs.7820+2100)(Notional Fixation)	Rs.9,920/-
2	Pay as on 01-07-2008 (Notional fixation)	Rs.9,650/-	Pay as on 01-07-2008 (Notional Fixation)	Rs.10,170/-
3	Pay as on 01-01-2009 (Cash benefit)	Rs.9,650/-	Pay as on 01-07-2009 (Notional Fixation)	Rs.10,430/-
4	Pay as on 01-07-2009 (Cash benefit)	Rs.9,900/-	Pay as on 01-07-2010 (Notional Fixation)	Rs.10,750/-
5	Pay as on 01-07-2010 (Cash benefit)	Rs.10,200/-	Pay as on 01-07-2011 (Notional Fixation)	Rs.11,080/-
6	Pay as on 01-07-2011 (Cash benefit)	Rs.10,510/-	Pay as on 01-07-2012 (Notional Fixation)	Rs.11,420/-
7	Pay as on 01-07-2012 (Cash benefit)	Rs.10,830/-	Pay as on 01-12-2012 (Cash benefit)	Rs.11,420/-
8	Date of next increment	01-07-2013	Date of next increment	01-07-2013

IPS should be prepared accordingly and adduced with the service book of the incumbent concerned. The

Contents of the said Memo should be recorded in the service book of Sri Mridul Dey, Science Assistant"

11. The petitioner No.2 has also accepted such fixation under protest till finalisation by the Nodal Department. The challenge against the decision of the Government as narrated has been responded to by the Finance Department and other respondents by filing a joint counter affidavit whereas the respondent No.5, the Nagar Panchayat, filed the counter affidavit separately, contending that the petitioner No.1 was regularly appointed as the typist-cum-lower division clerk and thereafter he was given promotion to the post of the UDC by the Notified Area Authority and on his completion of 7 years of service in the post of UDC, he was given benefit of CAS-I as per the Tripura State Civil Services (Revised Pay) Rules, 1999. They have asserted as under:

"It was lately detected that neither approval of the State Government in the Finance Department nor was the approval of the Nodal Department, i.e., Urban Development Department was obtained before giving promotion to the petitioner No.1 in the said post. Therefore, the said post, for all practical purposes, was a non est post without any creation and sanction by the Competent Authority. Hence, the petitioner No.1 has been enjoying the benefit of a non existence post. Therefore, the Authority has taken up measures to correct the thing in a right way and hence, show cause notice was issued to the petitioner No.1 disclosing the intention of the Authority to put the petitioner No.1 in the fixed pay as Upper Division Clerk till a conscious decision has been taken by the Government in the appropriate level considering the Rules and Regulations. The petitioner No.1 replied but that reply does not satisfy the Authority to continue him in the scale of pay of Upper Division Clerk with the revision of pay as per Revision of Pay Rules, 1999. In this connection, it is made clear that scale of pay must attach to a validly created post in public employment. In the case in hand, no such creation and approval was obtained. Therefore, the Authority has passed the order vide No.F.1(15)-SBM/NP/ESTT/ 96/1583-85 dated 16th June, 2005 contained in Annexure-L to the Writ Petition at Page-49 making it specific that

pending decision/instruction from the Department on the issue, statuesque would be maintained in terms of their present monthly fixed salary, without prejudiced, however, to any future course of action that may be taken to bring into effect, from retrospective date, if necessary, the relevant provisions of the Memorandum of the Finance Department vide No.F.10 (22)-FIN(G)/DRW/2004, dated 11-08-2004 of Finance Department, Government of Tripura. Further it was said that till such time as the matter is finally settled, any increment or gradation otherwise due to the petitioners or any additional instalment of Dearness Allowance otherwise admissible, would be kept in abeyance."

12. It has been further contended by the respondents that the Government in the competent level has considered the grievances of the petitioners and as such they have taken the decision in the light of the proposal of the Executive Officer, Sabroom Nagar Panchayat otherwise, straightaway the petitioner No.1 would have been reverted to the post of the L.D. Clerk and the petitioner No.2 to the fixed pay post, if the said requirement still existed in the Sabroom Nagar Panchayat. But they have not been treated likewise. The crux of their contention is that when the petitioners were appointed respectively in the post of the UDC or in the post of the Science Assistant there were no such post in the said Nagar Panchayat and they had been irregularly appointed against those posts by giving their pay according to the pay scale usually available against such posts. It has been further asserted that the Finance Department has already taken action for regularisation of all such illegal engagements in terms of the Memorandum dated 11.08.2004. The petitioners No.1 and 2 cannot be treated as regular employee of the Sabroom Nagar Panchayat as their appointment in the post of Upper Division Clerk and Science Assistant were not approved at any point of time. They

cannot be treated as the regular employee in the said posts until the Finance Department as well as the Urban Development Department approved the said post.

13. Subsequently, the Sabroom Nagar Panchayat had initiated a proposal to the Urban Development Department vide their letter No.F.2(72)-SBM/NP/2002/2111 dated 09.08.2007. The Urban Development Department had processed the said proposal to the Finance Department vide their letter No.F.6(1)-UDD/DUD/MISC/2007/2283-84 dated 27.08.2007. The Finance Department vide their Memorandum No.F.10(3)-FIN(G)/2007 dated 07.11.2007 had concurred with the proposal for regularization of the services of the petitioner Nos.1 and 2 and the decision of the Finance Department was communicated by the Urban Development Department to the Sabroom Nagar Panchayat by the memorandum dated 27.11.2007, Annexure-R/2 of counter affidavit. The respondent No.5 even though filed a separate counter affidavit but replicated the stands of the respondent Nos.1 to 4.

14. Mr. D. C. Saha, learned counsel appearing for the petitioners has submitted that the petitioners cannot be faulted for such action. Hence, the financial benefit to which they are entitled to for serving against such posts which, has been taken away from them. The right as crystalised in their favour cannot be taken away by any subsequent action. Mr. Saha, learned counsel for the petitioners has further submitted that the Finance Department ought to have approved their appointments by *ex post facto* concurrence of creation of the posts from the respective date when

the petitioners were appointed by the Sabroom Nagar Panchayat. By not doing so, they have inflicted injustice on the petitioners.

15. Mr. T. D. Majumder, learned counsel appearing for the Sabroom Nagar Panchayat has submitted that whatever the decision the respondents have taken, has virtually protected the interest of the petitioners. Now they have been brought in the regular establishment and without much injury to their interest. However, for making appointments regularly from the subsequent dates the petitioners might have lost some benefits.

16. Mr. B. Dutta, learned counsel appearing for the State-respondents has submitted that the Finance Department has not taken any stern action. Sabroom Nagar Panchayat has adopted a very lenient approach for regularising the service and minimizing the adverse effects that might visit the petitioner for the expected strict action. He has further submitted that the Nagar Panchayat does not have any authority either to create post or manage fund in a manner they would like, rather they are to be governed by the general power of functions as prescribed under Part-II of the Tripura Municipal Act, 1994 particularly when Section 87 of the said Act categorically provides a definite procedure for maintaining the fiscal discipline to be observed by the local bodies like Nagar Panchayat and the Municipal Corporation or the Municipal Council.

17. On appreciating the rival contentions and on perusal of the records, this Court does not find any infirmity in the action taken by the respondents. But at the same time, since there is no decision regarding the proposed recovery as indicated by the

memorandum dated 10.02.2005, Annexure-I to the writ petition, this Court makes it abundantly clear that no recovery shall be made from the petitioners, as whatever the petitioners might have drawn in excess to their legal or regular entitlement cannot be attributable to their action but to the action indulged by the Sabroom Nagar Panchayat.

With this observation this writ petition stands disposed of. However, there shall be no order as to costs.

JUDGE

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