HIGH COURT OF TRIPURA
AGARTALA

1. WP(C) No.89/2020

Sri Snehangshu Das and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

Along with

2. WP(C) No.78/2020

Sri Debashish Datta and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

3. WP(C) No.93/2020

Sri Dipankar Dattagupta and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

4. WP(C) No.152/2020

Sri Mrinmoy Datta and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

5. WP(C) No.305/2020

Sri Biswajit Deb and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

6. WP(C) No.310/2020

Sri Dipak Biswas and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

7. WP(C) No.324/2020

Sri Dhirendra Chandra Nath and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

8. WP(C) No.339/2020

Sri Satyajit Majumder and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

9. WP(C) No.340/2020

Sri Haradhan Debnath and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

10. WP(C) No.341/2020

Sri Litan Deb and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

11. WP(C) No.360/2020

Sri Ashim Banik and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

12. WP(C) No.384/2020

Sri Sanjit Sutradhar and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

13. WP(C) No.394/2020

Abul Bashar Zia Uddin and others

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

14. WP(C) No.405/2020

Sri Prabir Malakar and another

----Petitioner(s)

Versus

The State of Tripura and others

-----Respondent(s)

For Petitioner(s) : Mr. K.N. Bhattacharjee, Sr. Advocate,
Mr. S.M. Chakraborty, Sr. Advocate,
Mr. P. Roy Barman, Advocate,
Mr. Somik Deb, Advocate,
Mr. Arijit Bhowmik, Advocate,
Mr. Raju Datta, Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Anujit Dey, Advocate,
Mr. Kawsik Nath, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharjee, G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment : **18th December, 2020**.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

These petitions involve identical issues. They have been heard together and would be disposed of by this common judgment. For convenience we may refer to facts and pleadings from WP(C) No.89 of 2020. The petitioners' grievance is that even after completion of period of 5 years of engagement in the post of Assistant Teacher (Science Graduate) to which they were appointed way back in the year 2012 and on which they are still working, they have not been placed in regular pay scales.

2. In the State of Tripura the hierarchy of Government school teachers can be broadly divided in four categories which are; undergraduate teachers, graduate teachers and postgraduate teachers; who form a separate class for recruitment, promotions and pay scales, and of Assistant Teachers (Science). These science teachers are engaged in Government schools for teaching in Classes-I to X. The Government of Tripura had framed Employment Policy, 2003 and on the basis of which undergraduate, graduate and postgraduate teachers were recruited in the years 2010-12. The legality of these appointments came up for consideration before the Division Bench of this Court in case of ***Tanmoy Nath and others vrs. State of Tripura and others*** reported in ***(2014) 2 TLR 731*** in which the Court examined various aspects including the question of the validity of the employment policy, 2003. On various grounds appointments of large number of teachers recruited during the said period were set aside. This was *inter alia* on the ground that the employment policy, 2003 was found to be unreasonable. The State Government had challenged the judgment of ***Tanmoy Nath***(supra) before the Supreme Court. After initially staying the effect of the judgment, the State appeal came to be dismissed in the year 2017. From then on these teachers continued in Government employment on extension basis. In ***Tanmoy Nath*** (supra) and thereafter by the Supreme

Court the teachers already in service were given age relaxation for the subsequent recruitment processes. Those who could not get themselves selected, were terminated w.e.f. 31.03.2020.

3. This background was given for the purpose of later comparison though in the present case we are not directly concerned with the above dispute. We may now refer to the manner of engagement of petitioners as Assistant Teachers (Science) in government schools. The State of Tripura issued an advertisement on 25.08.2010 notifying in all 1450 posts of Assistant Teachers B.Sc. (Pure) and Assistant Teachers B.Sc. (Bio.). The advertisement provided the breakup of reserved and unreserved seats. The qualifications prescribed for the candidates were graduate in science from recognized university with Physics, Chemistry and Mathematics or Statistics for the post of Assistant Teacher B.Sc. (Pure) and graduate in science from a recognized university with Zoology, Botany and Physiology for the post of Assistant Teacher B.Sc. (Bio.). This advertisement contained an important clause which reads as under:

> "5) The candidates who applied in 2002, 2006 & 2009 in response to notification No.F.1(1-91)DSE/2002 dated 29th October, 2002, No.F.1 (1-20)-SE/E(NG)/06 dated 5th April, 2006 and No.F.1(1-42)-SE/E(NG)/09 dated 23rd September, 2009 for the post Graduate Teacher but had

> crossed the upper age limit in the meantime will be given scope by way of age relaxation. Such candidates may not be required to apply again but shall have to appear before new Interview Board for consideration."

As per this clause the candidates who had applied in 2002, 2006 and 2009 in response to the relevant notifications issued from time to time, but who had in the meantime crossed the upper age limit, would be granted age relaxation. It is an admitted position that this relaxation was granted because in the earlier attempts in the years 2002, 2006 and 2009 no recruitments were made. These candidates were, therefore, granted a limited relaxation in upper age limit.

4. All the petitioners applied in response to the said advertisement. They were interviewed, selected and appointed. One such appointment order dated 29.03.2012 issued in favour of Sri Snehangsu Das, petitioner No.1 on the post of Assistant Teacher B.Sc. (Bio.) is produced at page-38 (Annexure-2 to the petition). His appointment was subject to certain terms and conditions, one of them being that the appointment would be purely on temporary basis. The said petitioner and all other petitioners joined the service on or around 02.07.2012.

5. The Government of Tripura, has framed a policy as per which the recruitment of Group-C and D staff is initially made on fixed salary basis for a period of 5 years after which they would be brought over to regular scales. This policy is framed under office memorandum dated 16.10.2007. In order to do so, the notification provides that the fresh appointments in the said cadres would be made on fixed pay basis by keeping in abeyance the posts on regular pay scales. This notification provides that:

> "Under the system, first of all Fixed-pay Posts are created against available regular pay scale posts with concurrence of the Finance Department. After that candidates are selected by the Departments on observance of all required formalities in compliance to the provisions of RR for the concerned regular pay scale post and recruited on fixed pay basis. The fixed pay amount is determined under formula 75% of initial basic pay in the time scale for Group-D posts and 65% of the initial basic pay in the time scale for Group-C employees. Further a number of fixed pay posts including supernumerary posts were/are also created/continued to be created for providing jobs under die-in-harness cases/extremist violence cases. Subsequently in the Budget declaration of 2006-07, a policy decision was announced to the effect that such Fixed-pay employees on completion of 5(five) years of service will be provided regular pay scale."

The notification further provides that:

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"3. On consideration of the above position, it has been decided to provide following benefits:

(i) Those employees who were recruited on Fixed-pay basis against fixed pay posts created by keeping abeyance regular scale posts and recruited on observance of all required formalities including adherence to provisions of RR would be provided benefit of leave, coverage under Die-in-harness scheme, seniority in service like regular pay scale employees, counting of full fixed pay period for the purpose of pension and retirement benefits. Identical benefits would be provided to the fixed pay employees appointed against supernumerary posts created in different Departments for providing jobs under extremist violence cases/die-in-harness cases. Department-wise list of such employees whose particulars have been found consistent with the requirement is enclosed herewith.

(ii) Service records of these employees would be maintained by opening of service-book for each of such fixed pay employees.

(iii) After opening of the service book and on completion of 5(five) years of service from the date of joining, such employees would be provided regular scale of pay.

……..

4(ii) After verification of required certificates and documents and on completion of 5(five) years of service without any break, regular pay scale would be provided from the following date.

(iii) After getting benefit of regular scale of pay, the concerned employee will be eligible to get admissible DA and other benefits.

(iv) If any genuine case is found left out in the enclosed annexure, that may be referred to the F.D. to consider inclusion.

(v) In future wherever new candidates will be recruited under Fixed-pay post created by keeping abeyance regular scale post, their names and particulars will have to be sent to the F.D. for extending the aforesaid benefits to them."

6. By a further memorandum dated 22.12.2010 the Government clarified that the employees recruited on fixed pay basis by keeping the regular scale of posts in abeyance and after observing all required formalities including adherence to the provisions of the recruitment rules ***"are to be treated as like as/at par with employees recruited in regular pay scale in respect of entitlement of leave, seniority in service, coverage under die-in-harness scheme, completion of full service rendered during the fixed period for the purpose of pension and other retirement benefits……***

By a further office memorandum dated 15.11.2012 the Government clarified that such initial period would also count towards seniority.

7. The case of the petitioners is that having been thus engaged after following the recruitment rules and regular selection process, but by virtue of Government policy in fixed pay regime, after completion of 5 years of service they ought to have been brought over to regular pay scales.

8. On the other hand, the case of the Government is that the engagement of the petitioners in the year 2012 was not against sanctioned posts. They were engaged on temporary and ad-hoc vacancies. They, therefore, cannot be brought over to regular establishment. The respondents have filed a detailed reply in which two additional grounds for opposing the petitions are raised which are that these petitioners were also recruited by following the employment policy of 2003 which was found to be invalid by this Court in case of ***Tanmoy Nath***(supra) and that these teachers did not possess the requisite qualification of B.Ed. pass which is minimum prescribed by the NCTE for Assistant Teachers.

9. These three objections raised by the Government in an affidavit-in-reply dated 03.12.2020 filed by the Deputy Secretary to the Government of Tripura can be quoted in the words of the deponent itself:

> "10. That, with regard to paragraph-2.7, I say that the services of Post Graduate Teachers/Graduate Teachers who were appointed in the year 2010 on fixed pay basis was

regularized after completion of 5 years their service on fixed pay basis being they were appointed to the post of Post Graduate Teacher/Graduate Teachers against the posts created on fixed pay basis keeping abeyance of similar number of vacant posts of regular posts. But the petitioners were appointed on fixed pay posts created directly and these posts were not created by keeping abeyance of regular vacant posts.

It is submitted that the petitioners were appointed following the then Recruitment Rules of Assistant Teacher, Secondary Schools framed vide notification No.F.25(1)-E/70(EC) dated 26.01.1971 and the selection was made on the basis of oral interview method following Revised Employment Policy 2003, same procedures as followed in case of appointment of teachers made in 2010 and 2013-14 which was struck down by the Hon'ble High Court of Tripura in its Judgment & order dated 07.05.2014 and subsequently, Hon'ble Supreme Court of India affirmed the same vide Judgment & order dated 29.03.2017.

The provision of National Council of Teacher's Education (NCTE) guidelines was not followed in this case. The educational and other qualifications required as per the NCTE notification dated 03.09.2001 and RRs of the State (1971) for appointment of Graduate teacher are stated below:-

NCTE Notification 2001	RR of 1971	Amendment of RRs of 2016 & 2019 as per NCTE Regulation 2014
Graduate with Bachelor of Education	Trained Graduate/ Untrained Graduate	Graduate/Post-Graduate from recognized University with at least 50% marks in either Graduation or

(B.Ed) or its equivalent. Or 4 years integrated B.Sc, B.Ed or an equivalent course.		Post Graduation (or its equivalents) and Bachelor of Education (B.Ed) from National Council for Teacher Education recognized Institution.

10. On the basis of such disputes, learned counsel for the petitioners whose arguments were led by Mr. Somik Deb who any way represented the bulk of the teachers and, therefore, was expected to carry larger burden of research, submitted that all the petitioners were engaged as Assistant Teachers after carrying out proper selection process in accordance with the recruitment rules and prevailing Government policies against existing vacancies. They were engaged on fixed salary basis only by virtue of the Government policy and upon completion of 5 years of service as is a Government decision in case of all such similar appointments, the petitioners should have been brought over to regular scale. He submitted that the petitioners' appointments were never under challenge. They are still continuing in service. The decision of this Court in case of ***Tanmoy Nath***(supra) cannot be applied to deny the regular salary to the petitioners. Neither the Government nor anyone else has questioned the legality of the appointments of the petitioners. In any case, the decision of this Court in case of ***Tanmoy Nath***(supra) was not based solely on the defects in the

Employment Policy of 2003. The entire selection process was found to be unacceptable. In any case, without a challenge to the appointments of the petitioners, Government cannot treat them as irregularly employed. Counsel further submitted that the objection to the qualifications is wholly baseless. He submitted that the Government has referred to amendments of the Recruitment Rules made in the years 2016 and 2019 which amendments were made long after the petitioners were recruited. When the petitioners were recruited, the NCTE notification prescribed the qualification of graduation with B.Ed. pass. However, on account of shortage of B.Ed. pass candidates in the State of Tripura, the Government of India had given a specific exemption to the State with respect to this qualification. Time was granted to existing teachers to acquire the qualifications which all the teachers have.

11. Other learned counsel for the petitioners brought to my notice office memorandum dated 06.08.2010 [copy of which is produced at page-80 in WP(C) No.305 of 2020] in which it has been stated as under:

> "The Governor of Tripura has been pleased to accord sanction to the creation of 1450 nos. of posts of Asstt. Teacher (Group-C, B.Sc. (Pure)=870 Nos. & B.Sc.(Bio)=580 nos.) by maintaining 100 point roster on fixed pay basis @ Rs.7060/- per month as per R.O.P. 2009 during the year 2010-2011."

12. For comparison the petitioners also produced at page-81 of the same petition an office memorandum dated 27.07.2009 in which in the context of the graduate teachers following has been stated:

> "The Governor has been pleased to accord sanction to the creation of 1538 (One thousand five hundred thirty eight) posts of Group-C (Non-Gazetted) employees of Graduate Teacher on fixed pay @ Rs.7,060/- p.m. (R.O.P. 2009) of Middle, High and H.S.(+2) Stage Schools temporarily upto the end of February, 2010."

13. My attention was also drawn to the Tripura State Civil Services (Revised Pay) Rules, 2009 in which sub-rule (2) of Rule 2 which pertains to application of the rules *inter alia* provides that unless specifically extended under express order of the Government, these rules shall not apply besides others to "*persons paid on a monthly fixed pay basis including those paid only on piece rate basis*". On the basis of these documents, counsel contended that in clear terms these 1450 posts were created and sanctioned by the Government of Tripura under ROP, 2009 and were thus regular sanctioned posts as in case of the graduate teachers for which a similar office memorandum was issued.

14. My attention was also drawn to an office memorandum dated 05.12.2012 of the Deputy Secretary to the Government of Tripura, Finance Department, copy of which is at page-181 to WP(C) No.152 of 2020 in which it is provided that "*the existing monthly remuneration of Fixed Pay employees (who have been engaged against fixed pay posts created by keeping in abeyance regular scale post) will be increased by Rs.266/- (Rupees two hundred and sixty six) only per month for Group-C Fixed Pay employees and Rs.161/- (Rupees one hundred and sixty one) only per month for Group-D Fixed Pay employees effective from 01-12-2012*". Learned counsel Mr. Raju Datta appearing in the said petition, stated that the petitioners have been granted such increment which would imply that even the Government treated these teachers as having been engaged on fixed salary basis by keeping the regular posts in abeyance.

15. My attention was also drawn to an office memorandum dated 19.06.2012 issued by the Secretary & Director of School Education, Government of Tripura, copy of which is produced at page-198 in WP(C) No.93 of 2020 relevant portion of which reads as under:

> "WHEREAS, applications were invited from the intending eligible candidates to fill up the post of Assistant Teacher vide No.F.1(1-48)-SE/E(NG)/2010 dated 25/08/2010;
>
> AND

WHEREAS, interview was conducted in each Sub-Division by 3(three) Interview Boards constituted for this purpose vide Memorandum No.F.1(1-48)-SE/E(NG)/2010 dated 13/09/2010 for the period w.e.f. 27th September, 2010 to 19th October, 2010;

AND

WHEREAS, the Interview Boards recommended the names of the candidates for the posts of Assistant Teacher;

AND

WHEREAS, Offer of Appointments in favour of 1000 recommended candidates duly approved by the State Government were issued on 29.03.2012 with a direction to convey their acceptance with all necessary particulars by 10/04/2012;

AND

WHEREAS, the acceptance of Offer of Appointments have been received and verified and found in order,

NOW, THEREFORE, in the interest of public service the persons as per annexed list are hereby appointed as Assistant Teacher temporarily under the Education (School) Department, Government of Tripura on Fixed Pay basis with monthly fixed pay of Rs.7060/- (Rupees Seven Thousand and Sixty) only. They are entertained against the post of Assistant Teacher created vide Education Department, Tripura memo No.F.8(1-33)-SE/PLAN/2010(1) dated 06/08/2010. The expenditure involved on this account is debitable to the Head of Account 2202-General Education, 02-Secondary Education, 104-Teachers & Others Services 41-Human

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Development, 18-Govt. Secondary Schools, 01-Salaries (NON PLAN) under Demand No.40."

Reference to this document was made to point out that the petitioners had been appointed after following regular selection process against sanctioned posts.

16. I may deal with the Government's objection with respect to the nature of posts on which the petitioners are engaged last since this would require some detailed discussion. In the context of the judgment of this Court in case of ***Tanmoy Nath***(supra), the Government's objection is not valid at all. It is undisputed that in the said litigation what was under challenge was the recruitment and engagement of large number of undergraduate, graduate and postgraduate teachers which the Division Bench of this Court found wholly arbitrary and consequently set aside all such appointments. Only reprieve granted to the concerned teachers was of age relaxation for future recruitment processes. If they are selected during such recruitments, their past services would be protected. This judgment of this Court was confirmed by the Supreme Court. Only modification was the extension of time for filling up the posts and corresponding age relaxations. However, in the said litigation the appointments of the petitioners were never challenged and, therefore, never examined. Even if these petitioners

were engaged by following the same Employment Policy of 2003 which the Court found objectionable in case of ***Tanmoy Nath***(supra), their appointments cannot be treated as defective or impermissible in any manner. The Government never questioned such appointments. In fact, the Government had challenged the judgment of this Court in case of ***Tanmoy Nath***(supra) and, therefore, had tried to save the appointments of the concerned teachers. Be that as it may, as far as the present petitioners are concerned, neither any private individual nor the Government at any stage has questioned the legality of their appointments. In any case, the Government cannot continue them in service but deny them regular wages by suggesting that their appointments were not legal.

17. One may also notice that some of these teachers were sent for training in IGNOU sponsored by the Government. Some other teachers, the teachers whose appointments were set aside by the High Court in ***Tanmoy Nath***(supra), and were continued on ad hoc basis by virtue of interim orders passed by the Supreme Court, questioned these nominations by the Government by filing WP(C) No.1110 of 2018. According to these teachers there was parity between the petitioners and the respondents therein. In order to justify its action of nominating the concerned teachers to the exclusion of

the petitioners therein, the Government in the reply filed in the said petition had stated as under:

> "9. That, in reply to the contentions made in paragraph 8 of the Writ Petition, I state that the Respondent No.2 vide Notification No.F.1.(1-48)-SE/E(NG)/2010 dated 25th August, 2010 invited applications from the eligible Indian Nationals and permanent residents of Tripura for 1450 posts of Assistant Teacher, B.Sc.(Pure)-870 post and Assistant Teacher, B.Sc.(Bio)-580 posts. In the said Notification, qualification for the post of Assistant Teacher, B.Sc.(Pure) was confined "Graduate in Science from a recognized University (with Physics, Chemistry, Mathematics or Statistics," and for the posts of Assistant Teacher, B.Sc.(Bio) it was Graduate from a recognized University (with Zoology, Botany, and Physiology). In the said notification dated 25th August, 2010 it was also stated that the candidates who applied in 2002, 2006 and 2009 for the post of Graduate Teacher on fixed pay basis need not apply again for the said 1450 posts. However, they shall have to appear before a Interview Board afresh to be constituted by the Department subsequently. Total 6,784 applications were received for 1450 posts Assistant Teacher. Subsequently, the state Respondents decided to fill up 1000 posts of Assistant Teacher out of 1450 posts. Accordingly, the Finance Department, Govt. of Tripura gave concurrence for filling up of 1000 posts of Assistant Teacher. The Council of Ministers in its meeting held on 7th February, 2012 also approved the proposal of the Department for filling up of 1000 posts only. Thereafter, the Respondent

No.2 appointed 1000 candidates to the post of Assistant Teacher as per selection by the Interview Boards.

……

13. That, in reply to the contentions made in paragraph 14 of the Writ Petition, I denied that the Hon'ble High Court in its judgment dated 07.05.2014 set aside the entire selection process of Assistant Teacher (Science), 2012. It is submitted that the Hon'ble High Court in its judgment dated 07.05.2014 has set aside the selection process of Post Graduate Teacher, Graduate Teacher and Under Graduate Teacher appointed in the year 2010 and 2013-14 only.

14. That, in reply to the contentions made in paragraph 16 to 20 of the Writ Petition, empathetically I denied that any discrimination has been made with the petitioners. It is submitted that the service of the petitioners have been terminated as per order of the Hon'ble Supreme Court since they were appointed in the year 2010. But the proforma respondents were not appointed in the year 2010 or 2013-14. Therefore, they are not come under the purview of the order dated 29.03.2017 of the Hon'ble Supreme Court of India and therefore, the petition of the petitioners are liable to be dismissed and rejected."

Thus, even the Government represented that the cases of these petitioners were not covered by the judgement in case of ***Tanmay Nath***

(supra). In view of this, the first objection of the Government in granting the regular pay scales to the petitioners is turned down.

18. Similarly the objection of the petitioners not possessing requisite educational qualifications is also for two reasons not a valid objection. Firstly, the Government itself was the recruiting agency. The Government had prescribed minimum qualifications in the recruitment rules. These qualifications were published in the recruitment notification. It is not the case of the respondents that any of the petitioners did not possess these qualifications. Several years later the Government cannot raise the legality about the recruitments on the ground that these petitioners did not possess the educational qualifications prescribed by NCTE. In any case, this objection on merits also is not sustainable. We have noticed that as per the Government the qualifications prescribed in the recruitment rules were amended in the year 2016 and 2019 to be in tune with NCTE regulations of 2014, the minimum requirement being a graduation or post graduation from recognized university with at least 50% marks in either of the two degrees and Bachelor of Education from National Council for Teacher's Education recognized institution. These amendments which were made in the year 2016 and 2019 obviously cannot apply to recruitments which were made in the year 2012. It is true that the NCTE notification of 2001 provided the

minimum educational qualification of graduation with B.Ed. or equivalent for a teacher. However, as correctly pointed out by Mr. Somik Deb, under a notification dated 18.06.2012 the Government of India, looking to the serious shortage of trained teachers in the State had given exemption from such additional qualification for appointment of a teacher. This notification took into account the proposal of the Government of Tripura for relaxation of the requirement of minimum qualifications for appointment as teachers as provided under sub-section (2) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009. This relaxation was granted up to 31.03.2015 subject to certain conditions including the condition that the State Government shall take all steps to increase the institutional capacity for preparing persons with qualifications to ensure that only qualified persons are appointed as teachers after 31.03.2015. This exemption was thereafter extended. By a further memorandum dated 19.08.2017 it was provided that those teachers who were already engaged shall also acquire the qualifications of a trained teacher as prescribed by NCTE within the stipulated time of 31.03.2019. Since there was a severe shortage of seats as compared to the aspirants, the existing teachers who may wish to have their qualifications regularized, the Government of India in the said notification

also recognized certain online courses through which the qualifications could be obtained. Relevant portion of this notification reads as under:

> **"All in-service untrained teachers (Govt., Govt. Aided and Private Schools) shall acquire the minimum qualification required under the RTE Act, 2009 within the extended period till 31/03/2019 through the ODL Programme of NIOS except those who have already enrolled in IGNOU during July 2017 session."**

19. In ***WP(C) No.87 of 2020*** and connected petitions in case of ***Sri Raju Nama and others vrs. The State of Tripura and others*** reported in ***(2020) 1 TLR 725*** this Court had occasion to examine the equivalence of Online Distance Learning Programmes through NIOS for the purpose of qualifications for trained teacher. The Court held and observed as under:

> "19. In the anticipation that the petitioners will acquire the minimum qualifications of D.El.Ed. certificate, they were allowed to undertake the T-TET course. They have duly completed the D.El.Ed certificate course. They must therefore be allowed to enjoy the fruits of their having cleared the T-TET examination also. The State Government must issue a necessary certificate in this respect. The objection of the State Government that the basic qualification of D.El.Ed. pass was obtained by the petitioners from an institute which offered the course over duration of 18 months instead of 24 months envisaged as per the Regulations, is overruled.

> 20. In the result, petitions are allowed. The respondents shall accept the petitioners‟ certificate of D.El.Ed. pass from NIOS (ODL programme) as valid for all purposes including for the purpose of undertaking TET examination. Necessary certificate of T-TET clearance would be issued to them if they have passed the examination. This shall be done within a period of 4 (four) weeks from today.
>
> Pending application(s), if any, also stands disposed of."

Distance learning course offered by IGNOU stands on the same footing as one offered by NIOS. I am informed that all the petitioners have obtained the qualification through distance learning course offered by IGNOU/NIOS.

This objection of the respondents also, therefore, is turned down.

20. The sole surviving objection of the Government is of the existence of sanctioned posts against which the petitioners were appointed. By way of cost saving measures the Government policy framed from time to time provides for engagement of Group-C and D employees initially for a period of 5 years on fixed salary basis. Such employees would be paid a percentage of the basic salary (which earlier was 65% of the basic and which has been increased to 75% of basic salary) prescribed for the post in question without other attendant pay benefits. This arrangement would

continue for a period of 5 years upon completion of which the employee would be brought over to regular pay scale and the entire period of 5 years would be counted for all purposes including seniority and pension. This formula is brought about by keeping the existing vacancy in abeyance and temporarily creating an ad-hoc vacancy on fixed salary basis.

21. In the present case, there is nothing on the record to suggest that the present petitioners were also not similarly engaged. The advertisement dated 25.08.2010 invited applications for in all 1450 posts of Assistant Teacher B.Sc.(Pure) and Assistant Teacher B.Sc.(Bio.). As noted, those who had already applied in response to three previous attempts of recruitment would be granted age relaxation. Thus, contrary to what has been suggested before me by the Government, this is not a case where such 1450 vacancies were for the first time created in temporary establishment and for which the recruitment process was being undertaken. Some of these vacancies at least, were existing in the years 2002, 2006 and 2009 and which could not be filled because of failed attempt at recruitment. In fact, there are several indicators to believe that these vacancies were on the same pedestal as other teachers and other Government posts where recruitments on fixed salary basis were being made from time to time. For example, the office memorandum dated 06.08.2010, as noted provided that the Government of

Tripura was pleased to accord sanction to the creation of 1450 posts of Assistant Teacher which would be filled up by maintaining 100 point roster. The office memorandum dated 27.07.2009 which pertains to the graduate teachers, also contained identical narration of creation of posts. The State Government does not dispute that the posts of graduate teachers were part of regular establishment. One would fail to discern any distinction between the two classes of cases. Further, as correctly pointed out by learned counsel Mr. Arijit Bhowmik, these posts also carried a fixed pay per month as per ROP, 2009 and ROP, 2009 as noticed, would apply to permanent posts and not ad-hoc or temporary arrangements. We also noticed that in the office memorandum dated 19.06.2012 the Director of School Education had recorded that applications were invited from eligible candidates for filling up of posts of Assistant Teachers under notification dated 25.08.2010 pursuant to which interviews were conducted and the names of selected candidates were recommended. These persons were appointed as Assistant Teachers on temporary basis against the posts of Assistant Teacher created by Education Department vide notification dated 06.08.2010. This is the very notification which records the sanction for creation of 1450 posts and for which 100 point roster would be maintained.

22. Further, one may notice that under a notification dated 15.06.2017 copy of which is produced at Annexure-33 to WP(C) No.93 of 2020 the Government of Tripura revised the rates of remuneration for persons engaged on fixed pay basis and daily rated, contingent workers etc. In paragraph-4 of the said notification it was provided that the employees recruited on fixed pay basis against formal creation of fixed pay posts by keeping in abeyance regular scale posts, following revised rates would be payable:

Fixed Pay employees	75% of the minimum slab of entry level pay in the concerned Pay Band + concerned Grade Pay taken together.	75% of the initial pay in the level of the pay matrix to which he has been appointed/ engaged.

23. It may be recorded that in the same paragraph rates of remuneration for DRW, monthly rated workers, part-time workers etc. were also separately revised and which were fixed sums without any reference to the percentage of any basic pay. What is of relevance is that for employees recruited on fixed pay basis against formal creation of fixed pay posts by keeping in abeyance existing posts, the remuneration rate was revised to 75% of the minimum slab of the entry level pay (which previously was paid @ 65% thereof). On the other hand, other workers such as, daily rated workers, part-time workers, contingent-paid workers, the rate revision was

separately prescribed. It is undisputed that all the petitioners are receiving monthly remuneration at such revised rates of 75% of the entry level basic inclusive of Pay Band. This rate revision was applicable in case of employees engaged on fixed pay basis by keeping the existing vacancies under sanctioned existing vacancies in abeyance. This would be a clinching evidence to show that even the Government treated the engagement of these petitioners against sanctioned posts but for the purpose of remuneration which posts were kept in abeyance.

24. There is yet another angle to the whole issue. All the petitioners are discharging duties as teachers in primary and secondary divisions in Government schools where the very foundation of the students who would form the future generation of the society is laid. For over 8 years the Government refuses to remunerate these teachers at fair wages which are paid to other similarly situated teachers with same qualifications and nature of work. If the only argument of the Government is that they cannot stake their claims over regular pay scales because there are no sanctioned posts, there has to be something seriously wrong with the Government policy formation. As many as 1450 school teachers cannot be kept against unsanctioned posts. The fact that the work exists for them and precisely that is why they have been engaged is beyond dispute. When the work is of such

perennial nature and the work is of such importance, can the Government argue that because the posts are not sanctioned the petitioners will not get fair wages. Obviously the answer has to be in the negative. Continuing the petitioners on fixed salary in perpetuity and at the same time expecting full dedication, efficiency and sincerity in their discharge of the duties would be a dichotomy.

25. In the result, all the petitions are allowed by providing that the petitioners will be brought over to regular pay scale upon completion of 5 years of service from initial engagement. This shall be with all consequential benefits including past arrears of wages and pay fixations. All the benefits of Government notifications issued from time to time concerning their past services will also be available to the petitioners. Entire exercise shall be completed within a period of six months from today.

26. All petitions disposed of accordingly.

27. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

Pulak