HIGH COURT OF TRIPURA
AGARTALA
Rev.Pet.No.14 of 2020

Sri Manoj Kumar Paul

…….Petitioner(s)

Versus

The High Court of Tripura & Others

…….Respondent(s)

For Petitioner(s)	:	Mr. D.K. Biswas, Adv.
For Respondent (s)	:	Mr. D. Bhattacharya, G.A. Ms. P. Dhar, Adv.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

06.10.2020

Heard Mr. D.K. Biswas, learned counsel appearing for the review petitioner as well as Mr. D. Bhattacharya, learned G.A. appearing for the respondent No.2 and Ms. P. Dhar, learned counsel appearing for the respondents No.1 and 3.

2. By the judgment and order dated 29.01.2019 this court had occasion to observe as follows :

> **"13. Having observed thus, the respondents No.1 & 3 are directed to place their report to the Finance Department, Government of Tripura within a week from today along with a copy of this order. The petitioner shall further submit a representation giving details of his grievance with the copy of the report of the High Court and a copy of this order through the proper channel to the Principal Secretary, Finance Department, Government of Tripura. Having received this representation, the Finance Department shall take the necessary exercise to consider and obliterate the 'anomaly' [as stated]. If the direct recruit can get the higher initial pay a promotee cannot be deprived of such pay. This shall be the foundation of the entire consideration as would be carried out by the Finance Department.**

> **It is further clarified that if in the meanwhile the petitioner retires from the service, his pension and other retiral benefits may be fixed on the basis of the last pay he would draw, but if the Finance Department takes a decision which would favour the petitioner to get the higher initial pay scale as indicated, equal to that of the direct recruit, his pension and other retiral benefits shall be revised in terms of the said decision of the Finance Department."**

In terms of the said direction contained in Para-13 of the said judgment dated 29.01.2019, the review petitioner moved an application for drawing up a contempt proceeding being Cont.Cas(C)No.154 of 2019.

3. Appearing for the respondents, their counsel had produced a copy of the memorandum under No.F.6(1)-FIN(PC)/2008 dated 26.08.2019 in the said proceeding. Purpose of such production was to make reference to paras-2 and 3 of the said memorandum. Counsel for the respondents had quite unambiguously submitted that the anomaly that had emerged in the case of the petitioner will stand removed if those clarifications contained in the memorandum dated 26.08.2019 are applied.

4. Mr. Biswas, learned counsel appearing for the petitioner has further submitted, referring to para-6 of the supplementary affidavit filed on 02.03.2020, that the said memorandum dated 26.08.2019 which was Annexure-1 to their reply can be applied to the case of the petitioner and accordingly, the appropriate authority, the High Court had been communicated by the concerned department. In the order dated 03.03.2020 whereby the contempt proceeding was closed, the submission of counsel appearing for the respondents who had stated that the memorandum dated 26.08.2019 can be applied has been recorded. For purpose of reference, the said memorandum dated 26.08.2019 is extracted hereunder :

"GOVERNMENT OF TRIPURA
DEPARTMENT OF FINANCE
****

No.F.6(1)-FIN(PC)/2008 **Dated, Agartala, the 26th August, 2019**

MEMORANDUM

Subject :- Clarification regarding fixation of pay of Government employees promoted to higher posts with higher pay structure on or after 01.01.2006 in terms of TSCS(Revised Pay) Rules 2009.

The undersigned is directed to refer to the provisions contained in Rule 8 of TSCS (Revised Pay) Rules 2009 which states that the pay of direct recruits to a particular posts carrying a specific Grade Pay shall be fixed on or after the 01.01.2006 at the entry level pay in the Pay Band as indicated in Part-E read with Part-D of Schedule-I of this Rules. In the case of promotion on or after 01.01.2006, if the concerned employee has opted for revised pay in terms of TSCS(Revised Pay) Rules 2009 in his lower post, then his pay in the higher post due to promotion shall be fixed under the provisions of Rule 12 of TSCS (Revised Pay) Rules 2009.

2. Several Departments have made references to Finance Department seeking clarification on fixation of pay of those Government employees, who having opted to refix their pay in the lower post in terms of TSCS(Revised Pay) Rules 2009, subsequently gets promoted to higher post during the period of effect of TSCS (Revised Pay) Rules, 2009 and receives lower pay then the entry pay in the revised pay structure for direct recruits appointed on or after 01.01.2006 as indicated in Part-B read with Part-D of Schedule-I of TSCS (Revised Pay) Rules, 2009.

3. The matter has been examined in Finance Department and after careful examination, it has been clarified that the pay of those Government employees who have been drawing revised pay in the lower post in terms of TSCS (Revised Pay) Rules, 2009 and subsequently gets promoted to higher post during the period under TSCS (Revised Pay) Rules, 2009 shall not receive pay lower than the entry pay as indicated in Part-E read with Part-D of Schedule-I of TSCS (Revised Pay) Rules, 2009. An illustration to that effect is given below :-

Illustration :-

Suppose a Government employee in drawing basic pay of Rs.143030/- (Band pay-Rs.11430/- + Grade Pay-Rs.2600/-) per month in pay structure of PB-3 (Rs.9570-30000/- + Grade Pay – Rs.2600/-) in his lower post. He/She was appointed to a higher post on promotion in the pay structure of PB-3 (Rs.9570-30000/- + Grade Pay – Rs.3500/-) on 26.07.2011. He/She opts to get his pay fixed in the higher pay of the promotion post directly on the date of promotion i.e.26.07.2011. His pay will be fixed on promotion as follows :

1.	**Pay Band & Grade Pay applicable to the lower post**	**PB-3 (Rs.9570-30000/- + Grade Pay-Rs.2600/-)**
2.	**Basic Pay drawn in the lower post**	**Rs.14030/- (Band Pay-Rs.11430 + Grade Pay-Rs.2600/-)**
3.	**Pay Band & Grade Pay applicable to the promotion**	**PB-3 (Rs.9570-30000/- + Grade Pay – Rs.3500/-)**
4.	**Basic Pay on 26.07.2011 due to promotion as per Rule 12 of TSCS (ROP) Rules, 2009**	**Rs.15350/- (Rs.11430 + 3% of Rs.14030 i.e., 420 + GP-Rs.3500/-)**
5.	**Entry Pay in PB-3 against Grade Pay-Rs.3500/- as indicated at Part-E read with Part-D of TSCS (Revised Pay) Rules, 2009**	**Rs.16470/-**
6.	**Pay as on 26.07.2011 due to promotion**	**Rs.16470/-**

4. In light of the above, the undersigned is directed to inform that if the pay of a Government employee who has been drawing revised pay in the lower post in terms of TSCS (Revised Pay) Rules, 2009 and who has subsequently been appointed to a higher post on promotion during the period under TSCS (Revised Pay) Rules, 2009, happens to be lower than the Entry pay as mentioned at Part-E read with Part-D of Schedule-I of TSCS (Revised Pay) Rules, 2009 then the revised pay due to promotion shall not be less than the said Entry pay of the promotion post. However, this instruction shall not affect those cases where the fixation of pay due to promotion is higher than the entry pay of the promotion post. This shall also not be applicable to cases where a Government employee is already drawing higher pay of the promotion post, if any, due to entitlement of Assured Career Progression Scheme.

5. <u>The undersigned is further directed to inform that the above benefit of revised pay shall be allowed notionally, even for the purpose of revision of pay in respect of TSCS (Revised Pay) Rules, 2017 and its amendment Actual financial benefit of higher pay scale may be allowed to eligible cases from 1st September, 2019. Cases where the Government employee had proceeded on retirement shall not be reopened. For any posts that are not covered under the provisions of TSCS(Revised Pay) Rules, 2009 cases for relief in terms of the instant Memorandum may not be considered</u>.

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(A.Dewanj)
Deputy Secretary to the
Government of Tripura,
Finance Department "

[Emphasis supplied]

5. The petitioner has further submitted that from a reading of the said memorandum dated 26.08.2019, it appeared to the petitioner subsequently that if the clarifications made by the said memorandum dated 26.08.2019 are read with Para-5 of the said memorandum conjointly, the petitioner cannot perhaps get any benefit inasmuch as it has been provided under the said paragraphs that the cases where the government employees had proceeded on retirement, their cases shall not be reopened. For any post, that is not covered by the provisions of TSCS (Revised Pay) Rules, 2009, reliefs in terms of the said memorandum may not be considered.

6. This court being persuaded by the submission of Mr. Biswas, learned counsel had called for the records of Cont.Cas(C)No.154 of 2019. From the supplementary affidavit, as referred earlier, filed by the sole-respondent who was,

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at the relevant time holding the charge of the Finance Department it evinces quite definitedly as under :

> **"The Finance Department, Government of Tripura has issued memorandum dated 26th August, 2019. <u>If paragraph 2 and 3 of the said memorandum dated 26th August, 2019 is applied in the case of the Petitioner, the same will remove the anomaly and for revision of pension and other retiral benefits the Petitioner has to approach his appointing authority. The said memorandum dated 26th August, 2019 is annexed as Annexure-R/1 at page 43. The paragraph 2 and 3 of the said memorandum dated 26th August, 2019 will remove the anomaly and the same may be applied in the case of the Petitioner. For revision of pension and other retiral benefits the Petitioner may approach his appointing authority.</u>"**
>
> **[Emphasis added]**

On such undertaking in particular, the contempt proceeding was closed. The petitioner has, later on, realized that since the undertaking is not part of the memorandum dated 26.08.2019, his appointing authority may not act upon.

7. In the course of submission, Mr. D. Bhattacharya, learned G.A. has categorically made a statement that if the appointing authority sent the service-records of the petitioner, the benefits as provided in paras-2 and 3 shall be provided to him and thereafter, the appointing authority will take the appropriate decision regarding necessary revision of the pension and other retiral benefits. So far the anomaly in respect of fixation of pay is concerned, the Finance Department would apply the benefit as provided under paras-2 and 3 of the said memorandum dated 26.08.2019, text of which has been reproduced above.

8. In para-12 of the judgment and order dated 29.01.2019 delivered in WP(C)No.1618 of 2017, this court had observed that principle of the stepping up under FR-27 or under the Tripura State Civil Services (Revised Pay) Rules, 2009 [as amended] shall not apply in the present case. Even the 'stepping up' of the initial pay to the minimum of the pay band earmarked for the promotional post is not

relevant in the case in hand. But what this court had observed is that for the same and identical post a situation has been generated by the said rule that two persons appointed through two different sources might get two different initial pays and that would apparently be unsustainable inasmuch as they are holding the same post, even though, their source of recruitment is different.

9. By the said judgment and order dated 29.01.2019, this court had directed the Finance Department to set right the said anomaly. At that point of time, the respondents did not press the said memorandum dated 26.08.2019, providing that the employees who had been promoted to the higher post during the period of ROP Rules, 2009 shall not receive the lower pay than the entry pay of the direct recruit. For the decision as reflected in the memorandum dated 26.08.2019 it was understood that the grievance of the petitioner had been redressed.

Even in the reply filed by the respondents in Cont.Cas(C)No.154 of 2019, it was stated that the Finance Department, Government of Tripura issued the memorandum under No. F.6(1)-FIN(PC)/2008 dated 26.08.2019 clarifying that employees who have been promoted to the higher post during that period under ROP Rules, 2009 shall not receive lower pay than the entry pay of the direct recruit. So the grievance of the petitioner was apparently attended to by the memorandum dated 26.08.2019.

A repeat reading of the memorandum dated 26.08.2019 would show that if paras-2 and 3 are really applied to the case of the petitioner, the anomaly as pointed out in the writ petition stands

removed. The sole grievance of the petitioner is that he was getting the initial pay below the person, if recruited directly as per the Tripura State Civil Services (Revised Pay) Rules, 2009 as amended time to time.

10. Mr. D. Bhattacharya, learned G.A. has further submitted that the High Court of Tripura-respondent may forward the file with service records of the petitioner to the Finance Department and the said anomaly would be removed by the respondent No.2. Apart from the said undertaking in respect of applying paras-2 and 3, this court is of the further opinion that since the petitioner's case was pending since long in the administrative side of this High Court and later on, by the judgment and order dated 29.01.2019, the respondents were directed to remove the anomaly and it is now apparent that the petitioner is entitled to get the higher initial pay, equal to that of the direct recruit and on the basis thereof, the petitioner is entitled to get higher pension and retiral benefits. It would not mean the reopening of the claim. The claim subsisted much before the memorandum dated 26.08.2019 was issued. So far the fixation of pay is concerned, the Finance Department has a role to play inasmuch as, before the memorandum dated 26.08.2019 came into force, there was no provision to provide the said initial pay to the petitioner.

11. There is no dispute that if paras-2 and 3 should apply, the petitioner would get the benefit for which he had approached this court by filing the writ petition being WP(C)No.1618 of 2017. The petitioner's apprehension, as noted, is that para-5 of the said memorandum is problematic for him. A re-reading of the said para-5 demonstrates that the benefits as declared by paras-2 and 3 of the said memorandum dated 26.08.2019 shall also be extended for purpose of revision of

pay in respect of TSCS(Revised Pay) Rules, 2017 as amended from time to time. Actual financial benefit of higher pay shall be, as provided, allowed to the eligible cases from 01.09.2019. The cases where the government employee had proceeded on retirement shall not be reopened. For any post which is not covered under provisions of TSCS(Revised Pay) Rules, 2009, reliefs in terms of the said memorandum dated 26.08.2019 may not be considered. Whether the exclusion would apply to the case of the petitioner? There can be two categories of exclusion as made out in para-5 of the said memorandum viz. (i) cases where the government employee had proceeded on retirement shall not be reopened and (ii) for any post that is not covered under provisions of TSCS(Revised Pay) Rules, 2009, reliefs in terms of the said memorandum may not be considered. The second instance is not applicable in the case of the petitioner. Now, whether the exclusion of the first instance would apply to the petitioner?

According to this court the said exclusion cannot be applied to the case of the petitioner simply because that he had retired from the service, inasmuch as when he was in service he had clamoured for the said relief and as such, it should not be treated as reopening of a case or as a case of the retired employee simpliciter.

12. Moreover, Mr. D. Bhattacharya, learned G.A. has categorically asserted that if the appointing authority sent the service records of the petitioner to the respondent No.2, the benefit of paras-2 and 3 will be provided to the petitioner. In view of the above, no formal review of the judgment and order dated 29.01.2019 is called for. But for purpose of avoiding any confusion, the respondents are directed to provide the benefits of paras-2 and 3 of the memorandum dated

26.08.2019 to the petitioner notionally till 31.08.2019 and to accord the actual financial benefits thereafter. It is further stated that neither of the exclusion as stated above can deprive the petitioner from getting the benefit of equal pay of a direct recruit in the same post of Chief Librarian.

The respondents No.1 and 3 shall process the service records for applying paras-2 and 3 of the said memorandum dated 26.08.2019 in the case of the petitioner and accordingly necessary sanction in this regard shall be granted within a period of one month from the day when a copy of the order be made available by the petitioner or from the day when the service record shall be processed to the Finance Department or whichever latter. After the Finance Department provides the benefit of paras-2 and 3 of the said memorandum 26.08.2019, the respondents No.1 and 3 shall pass the appropriate order by revising the pension and other retiral benefits on the basis of the last pay that would be re-determined after the petitioner is granted the equal pay of the direct recruit by the Finance Department. Within two months from the day when the initial pay of the petitioner will be fixed by the Finance Department, the arrears of pension and other retiral benefits shall be paid to the petitioner.

In terms of the above, this review petition is disposed of.

A copy of this order be furnished to Mr. D. Bhattacharya, learned G.A. forthwith.

JUDGE

Sabyasachi B