IN THE HIGH COURT OF TRIPURA
A G A R T A L A

W.P.(C) No.392 of 2018
W.P.(C) No.393 of 2018
W.P.(C) No.394 of 2018

In W.P.(C) No.392 of 2018

Sri Suman Das,
son of Amar Chan Sarkar, resident of village-Ambassa Colony, P.O. Ambassa, District- Dhalai, Tripura, PIN-799289

..... **Petitioner**

– V e r s u s –

1. **The State of Tripura,**
represented by the Secretary to the Government of Tripura, Department of Panchayet, having his office at Secretariat Complex, P.O. Secretariat Complex, P.S. New Capital Complex, PIN-799010, Agartala, West Tripura

2. **The Director,**
Department of Panchayet, Government of Tripura

3. **The DM & Collector,**
Jawaharnagar, Dhalai District, Tripura

4. **The District Programme Coordinator,**
Dhalai, the DM & Collector, Government of Tripura, Jwaharnagar, Dhalai District

5. **The Block Development Officer,**
Government of Tripura, Ambassar R.D. Block, Dhalai Tripura

..... **Respondents**

In W.P.(C) No.393 of 2018

Sri Paresh Debnath,
son of Lt. Nitai Debnath, resident of village-Bhawlia Basti, P.O. Ambassa, District- Dhalai, Tripura, PIN-799289

..... **Petitioner**

– V e r s u s –

1. **The State of Tripura,**
represented by the Secretary to the Government of Tripura, Department of Panchayet, having his office at Secretariat Complex, P.O. Secretariat Complex, P.S. New Capital Complex, PIN-799010, Agartala, West Tripura

2. **The Director,**
Department of Panchayet, Government of Tripura

3. **The DM & Collector,**
Jawaharnagar, Dhalai District, Tripura

4. **The District Programme Coordinator,**
Dhalai, the DM & Collector, Government of Tripura, Jwaharnagar, Dhalai District

5. **The Block Development Officer,**
Government of Tripura, Ambassar R.D. Block, Dhalai Tripura

..... **Respondents**

In W.P.(C) No.394 of 2018

Sri Subindu Mog,
son of Kenu Mog, resident of village-Kachimcherra, P.O. Kulai, District-Dhalai Tripura, PIN-799204

..... **Petitioner**

– V e r s u s –

1. **The State of Tripura,**
represented by the Secretary, Department of Panchayet, Government of Tripura, having his office at Secretariat Complex, P.O. Secretariat Complex, P.S. New Capital Complex, PIN-799010, Agartala, West Tripura

2. **The Director,**
Department of Panchayet, Government of Tripura

3. **The DM & Collector,**
Jawaharnagar, Dhalai District, Tripura

4. **The District Programme Coordinator,**
Dhalai, the DM & Collector, Government of Tripura, Jwaharnagar, Dhalai District

5. **The Block Development Officer,**
Government of Tripura, Ambassar R.D. Block, Dhalai Tripura

..... **Respondents**

HIGH COURT OF TRIPURA
सत्यमेव जयते

For the petitioner (s)	**:**	Mr. K. Nath, Adv.
For the respondent (s)	**:**	Mr. P. Saha, Adv.
Date of hearing & delivery of Judgment & order	**:**	**01.12.2020**
Whether fit for reporting	**:**	**YES** ☐ **NO** ☑

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER [ORAL]

A short question that falls for consideration is whether the petitioners are entitled to higher remuneration for their acquisition of the Graduate Degree from the recognized institution. For that reason, the writ petitions being W.P.(C)

No.392 of 2018 [Sri Suman Das vs. State of Tripura & Ors.], W.P.(C) No.393 of 2018 [Sri Paresh Debnath vs. State of Tripura & Ors.] and W.P.(C) No.394 of 2018 [Sri Subindu Mog vs. State of Tripura & Ors.] are combined for disposal by a common judgment.

[2] The petitioner in W.P.(C) No.392 of 2018 was appointed as Gram Rojgar Sevak [GRS] on 27.01.2011 initially for a period of 2 years by the order dated 24.01.2011, but the said tenure was extended from time to time on renewal and hence, the petitioner is still working as the GRS in the Ambassa Rural Development Block. When the petitioner was initially appointed by virtue of the order dated 24.01.2011, he was an Under-Graduate but on 02.07.2014, he had acquired the higher educational qualification of Bachelor of Arts [3 years course] from Tripura University. On obtaining such degree, the petitioner informed the Block Development Officer, Ambassa RD Block, by his letter dated 01.09.2014 of his acquisition of the higher qualification. The petitioner has prosecuted the course for Bachelor of Arts after obtaining the due permission from the competent authority.

[3] The petitioner of W.P.(C) No.393 of 2018 was initially appointed as GRS on 29.01.2011 by virtue of the order dated 24.01.2011 in the Ambassa R.D. Block for two years. But the said tenure of engagement was extended time to time by way of renewal and hence, the petitioner is still serving as GRS without any break in the engagement. When the petitioner did enter into service he was an Under-Graduate but he had acquired the higher educational qualification of Bachelor of Arts [3 years course] from Tripura University. The petitioner had informed the Block Development Officer [BDO] Ambassa of his acquisition of the higher qualification.

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[4] The petitioner of W.P.(C) No.394 of 2018 was initially engaged as GRS through the selection process on contract basis w.e.f. 09.10.2006. The petitioner acquired Bachelors Degree on 23.07.2015. He had also informed the authorities of his acquisition of the Bachelor's degree.

[5] The petitioners have asserted that by virtue of the memorandum dated 26.12.2002 as issued by the Secretary to the Government of Tripura, Rural Development Department, Government of Tripura they are entitled to the remuneration

@Rs.10,187/- in place of Rs.6,933/- [the upgraded remuneration] from the date of their acquisition of Bachelors Degree. They are further entitled to the remuneration of Rs.13,178/- for their completion of 3 years of service. By the memorandum dated 08.04.2013 some clarifications were made by the Rural Development Department explaining that the revised remuneration per month would be from the date of issue of the memorandum i.e. 16.12.2012. It has been further clarified that the revised remuneration shall be provided for mere possession of a particular qualification and not based on minimum required qualification fixed for a category of post. It has been further clarified that the period of previous contract service of Mahatma Gandhi National Rural Employment Guarantee Act, MGNREGA, contractual employees may be taken into account for purpose of reckoning of eligibility to have the completion of 3 years of service for providing revised pay w.e.f. 16.12.2012 onward. By the subsequent memorandum under No.F.8(7)-RD/2012(p)/505 dated 28.02.2014, approval of the Government in Rural Development Department for revision of the rate has been communicated. Fore purpose of reference, the

relevant part of the said memorandum dated 28.02.2014 is extracted hereunder:

No.F.8(7)-RD/2012(P)/505
Government of Tripura
Rural Development Department

Dated, Agartala the 28th February, 2014

MEMORANDUM

Sub- Revised rate of remuneration of different categories of staff appointed on contract basis is MGNREGS, Tripura under MGNREGA

In continuation to this department's earlier Memorandum No.F.8(7)-RD/2012(P)/2352 dated 26th December, 2012 the undersigned is directed to convey the approval of the Government in Rural Development Department, Govt. of Tripura vide UO No.145/MIN/RD/14 dated 25.02.2014 for revision of rates for remuneration of the following categories of staff appointed on contract basis in MGNREGS, Tripura under MGNREGA as follows:

Sl. No.	Name of Post	Remuneration at Entry level		Remuneration after completion of 3 years	
		Existing rate p.m.	Revised rate p.m.	Existing rate p.m.	Revised rate p.m.
1	Programme Assistant [Under Graduate]	6,933/-	8,933/-	9041/-	11,041/-
2	Computer Operator [Under Graduate]	8,632/-	8,933/	9041/-	11,041/
3	Gram Rozgar Sevak [Under Graduate]	6,933/-	8,933/	9041/-	11,041/

2. The revised rate of remuneration shall take effect from the 1st March, 2014 and the others will remain unchanged.

3. The expenditure on the remuneration shall be booked under Head of Account meant for administrative expenses of the total fund-received under MGNREGA.

Sd
Illegible
[C.K. Jamatia, IAS]
Addl. Secretary to the Government of Tripura

To
The DPCs (D.M. & Collectors)
All district for kind information and necessary action please.

[6] It is apparent from the said memorandum dated 28.02.2014 [Annexure-7 to the writ petition being W.P.(C) No.392 of 2017] that for the GRS [Under-Graduate] the scale that has been prescribed at entry level is Rs.6,933/-, which had been subsequently revised to Rs.8,933/-. The said remuneration would be upgraded to Rs.9,041/- on completion of 3 years of service. The said rate has been revised by the said memorandum dated 28.02.2014 to RS.11,041/-, but the revised rate has been given effect from 01.03.2014. From the memorandum dated 16.12.2012 [Annexure-5 to the writ petition being W.P.(C) No.392 of 2017] it appears that there are two pay scales for GRS which are as follows:

Sl. No.	**Name of Post**	**Existing rate of remuneration p.m.**	**Revised rate of p.m. at entry level**	**Revised rate p.m. after completion of 3 years**
8	**Gram Rozgar Sevak [Graduate]**	**6,933/-**	**10,187/-**	**13,178/-**
9	**Gram Rozgar Sevak [Under-Graduate]**	**6,933/-**	**6,933/-**	**9,041/-**

[7] On obtaining the Graduate Degree, the petitioners had informed the respondents and applied for the remuneration which is entitled to the GRS [Graduate]. The petitioners have

referred the memorandum dated 08.04.2013 [Annexure-6 to the writ petition being W.P.(C) No.392 of 2017] which deals with the revised rate of remuneration of different categories of the employees appointed on contract basis in MGNREGAS, Tripura. The said memorandum is nothing but a clarification. The points raised for clarification and the clarification as given by the said memorandum dated 08.04.2013 [Annexure-6 to the writ petition being W.P.(C) No.392 of 2017] are given in a tabular form below:

Sl.	**Points on which clarification sought by the DPCs**	**Issued clarification**
1	**2**	**3**
1	**Exact date from which the revised remuneration may be effected.**	**The exact date of effect of the revised remuneration per month would be from the date of issue of the Memo. i.e. w.e.f. 26.12.2012.**
2.	**Whether revised remuneration shall be provided based on mere possession of a particular qualification or the minimum required qualification fixed for a category of post as per advertisement of recruitment**	**<u>The revised remuneration shall be provided mere possession of a particular qualification and not based on the minimum required qualification fixed for a category of post</u>.**
3.	**Whether the period of previous contract [which has expired after providing fresh engagement letter giving one day break] shall be eligible for providing enhance rate of remuneration on completion of 3 years of service.**	**The period of previous contract service of MGNREGA contractual employees may be taken into account in respect of completion of 3 years of service for providing revised rate of remuneration w.e.f. 26.12.2012 and onwards.**

[8] The said memorandum dated 08.04.2013 was followed by the memorandum dated 18.02.2014 as referred above. The claim of the petitioners for increasing their remuneration, from the remuneration of the Under-Graduates to the remuneration of the Graduates was considered by the competent authority and by the memorandum dated 04.07.2018 [Annexure-16 to the writ petition being W.P.(C) No.392 of 2017] it has been observed as follows:

> **It has been brought to the notice of Finance Department that some Departments have revised the rate of remuneration being drawn by a contractual employee due to attainment of higher educational qualification subsequent to his/her joining to that post.**
>
> **2. The matter has been examined in the Finance Department. It has been observed that remuneration to a contractual post is determined on the basis of essential minimum educational qualification required for the post. Higher educational qualification attained by a contractual employee while serving in initial post cannot be a criteria for further enhancing/revising the remuneration to the post. If a person, including an existing government servant [whether on regular pay scale or contractual remuneration or any other] possesses additional or higher qualification that entitles him to apply to higher post, he is at liberty to seek appointment to such higher post but he cannot under service jurisprudence claim higher pay while serving in lower post on the ground that he has during employment or even at the time of entry in service had acquired a higher qualification.**
>
> **3. In view of the above, the undersigned is directed to request all concerned to adhere to the above mentioned facts and issue suitable instructions to withdraw/cancel circular(s), if any issued at any point of time in this regard, with effect from the date of its issued.**
>
> **[Emphasis added]**

[9] The petitioners have asserted that at one point of time, some of the GRS [Under-Graduate] under MGNREGA were

provided the remuneration for GRS [Graduate] upon their obtaining higher qualification. As sequel of the memorandum dated 04.07.2018 [Annexure-16 to the writ petition being W.P.(C) No.392 of 2017], another memorandum was issued on 10.08.2018 [Annexure-10 to the writ petition being W.P.(C) No.392 of 2017]. By that memorandum dated 10.08.2018 the remuneration meant for GRS [Graduate] which was given to the GRS [Under-Graduate] who obtained the higher qualification [Bachelor's Degree] was recalled. For purpose of specific reference, the relevant part of the memorandum dated 10.08.2018 is reproduced below:

> **The Memorandum vide No.F.8(15)-RD/2016/1114 dated 20.06.2018 of this department in connection with providing enhanced remuneration to Graduate Gram Rozgar Sevak [GRS] subsequent upon their obtaining higher qualification is hereby cancelled. This is done as per Memo. of Finance Department issued vide No.F.3(2)-FIN(PC)/2017 dated 04.07.2018.**
>
> **This is issued with approval of the Finance Department vide U.O. No.182 FIN(ESTT-II)/2018 dated 02.08.2018.**
>
> **[Emphasis added]**

[10] The respondents No.3,4, & 5, hereinafter referred to as the principal respondents, by filing the reply have stated that the remuneration of GRS [Graduate] was revised from Rs.6,933/- to Rs.10,187/- per month at the entry level. On

completion of 3 years of contract service the remuneration will be automatically increased to Rs.13,178/- per month. It has been further stated by those respondents that the remuneration of GRS [Under-Graduate] is Rs.6,930/- per month at the entry level. On completion of 3 years of contract-based service, the said remuneration would automatically upgrade to Rs.9,041/- per month. The said remuneration of Rs.9,041/- has been given effect to. It has been asserted by those respondents that *'there is no such provision envisaged in the memorandum that the incumbent employee acquiring Graduate Degree shall come under the entitlement of higher remuneration'.* In Para-21 of the reply filed by the principal respondents, in response to Para-10 of the writ petition, it has been disputed that by virtue of the memorandum dated 08.04.2013 [Annexure-6 to the writ petition being W.P.(C) No.392 of 2017] the petitioners are entitled to the remuneration of the GRS [Graduate] for mere acquiring the higher qualification during the service period. The principal respondents have not disputed the fact of acquisition of higher qualification [Graduate Degree], but it has been strongly denied that for such acquisition, the petitioners are entitled to the remuneration of GRS [Graduate]. They cannot

even claim for higher remuneration for obtaining higher qualification after joining as GRS [Under-Graduate]. Finally, the principal respondents have contended that some of the GRS were getting the remuneration of GRS [Graduate] to which they were not entitled. When such irregularity was noticed by the respondents, those respondents took the initiative to recover the amount from those GRS who had drawn more remuneration than to what they were entitled to.

[11] Mr. K. Nath, learned counsel appearing for the petitioners has strenuously argued that there is no distinction between the duties and responsibilities among two categories of GRS. As such, they are entitled to equal remuneration. Even the principal respondents did not consider the implication of the doctrine. Moreover, at the entry level GRS who had graduation were given the higher remuneration and higher benefits. Thus, when the petitioners acquired the higher qualification, they had had applied for higher remuneration, but that was not acceded to and the reasons are purportedly shown in the memorandum dated 04.07.2018. Even the benefit which was given to one Dayananda Reang by enhancing his remuneration had been

recalled by the memorandum dated 28.08.2017. Mr. Nath, learned counsel has stated that the said recall was grossly illegal and contrary to the scheme. Hence, he has urged this court to interfere with the memorandum dated 05.07.2018, the memorandum dated 10.08.2018 and the memorandum dated 10.08.2018 respectively.

[12] Appearing for the principal respondents, Mr. P. Saha, learned counsel has submitted that there is no provision to grant the remuneration for the GRS [Graduate] to the GRS [Under-Graduate] for their obtaining the Graduation Degree in service. The petitioners may participate in the process of appointment of GRS [Graduate] on the basis of their higher qualification. There is no bar for such participation. He has further stated by referring to the memorandum dated 04.07.2018 that the principal respondents have clearly provided that remuneration to a contractual post is determined on the basis of essential minimum educational qualification required for the post. Higher educational qualification attained by a contractual employee while serving in the initial post cannot be a criteria for upgrading the remuneration. If a person including

an existing government servant, whether on regular pay scale or contractual remuneration or on any other wages, acquires additional or higher qualification which entitles him to be applied in the higher post, he is at liberty to seek appointment to such higher post, but he cannot under the service jurisprudence, claim higher pay while serving in the lower post on that ground that he had during employment or even at the time of entry in service, acquired higher qualification. The principal respondents do not have any authority under MGNREGA to provide the higher remuneration meant for GRS [Graduate] on the ground of acquisition of higher qualification [the graduate degree].

[13] The solitary question that falls for consideration in the perspective-fact, as narrated above, is that whether the principal respondents were under obligation by any rule or by the policy to grant higher remuneration [the remuneration which is given to the GRS (Graduate)] for acquisition of the Graduation Degree. On scrutiny of records, it has surfaced that there is no such rule to grant the higher remuneration [the remuneration which is given to the GRS (Graduate)] for acquisition of Graduate Degree by the GRS [Under-Graduate]

while in the contractual service. True it is that before issuance of the memorandum dated 04.07.2018, there had been a confusion whether the person working as the GRS [Under-Graduate] will be entitled to the said higher remuneration or not. It is on record that even some GRS [Under-Graduate] was provided with the higher remuneration as was entitled to the GRS [Graduate]. But subsequently, those benefits were recalled.

[14] Unless there is a specific rule or policy under the scheme called MGNREGAS, the petitioners cannot claim higher remuneration for their acquisition of higher qualification [the Graduation Degree] as a matter of right. Thus, the reliefs as sought by the petitioners cannot be granted. The writ petitions are, therefore, dismissed.

There shall be no order as to costs.

JUDGE

Sujay