**HIGH COURT OF TRIPURA**
**AGARTALA**

**W.P. (C) No.272/2015**

Smt. Panna Chakraborty,
W/O. Shri Nikhilesh Bhattacharjee,
"Kathira Baba'r Kuthir' Bordowali,
P.O. – A.D. Nagar, P.S. – West Agartala,
District – West Tripura - 799003

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Principal Secretary to the Government of Tripura,
   Education Department (School), New Capital Complex,
   799010, West Tripura.

2. The Director of School Education, Government of Tripura,
   Agartala – 799001, West Tripura.

.....Respondent(s)

**W.P. (C) No.273/2015**

Smt. Chhanda Debnath,
W/O. Shri Diganta Basu,
T-IVB/202, Lake View College Quarters Complex,
P.O. – Agartala College, P.S. – East Agartala,
District – West Tripura-799004.

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Principal Secretary to the Government of Tripura,
   Education Department (School), New Capital Complex,
   799010, West Tripura.

2. The Director of School Education, Directorate of
   School Education, Government of Tripura,
   Agartala – 799001, West Tripura.

.....Respondent(s)

**W.P. (C) No.274/2015**

Smt. Kakali Paul,
W/O. Dr. Abhijit Datta,
Ramnagar Road No.5/6m 1st Crossing,
P.O. – Ramnagar, P.S. – West Agartala,
District – West Tripura-799002

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Principal Secretary to the Government of Tripura,
   Education Department (School), New Capital Complex,
   799010, West Tripura.

2. The Director of School Education, Directorate of
   School Education, Government of Tripura,
   Agartala – 799001, West Tripura.

.....Respondent(s)

**W.P. (C) No.277/2015**

Dr. (Smt.) Maitreyee De,
W/O. Dr. Pradip Datta Chowdhury,
Malanchanagar, Govt. Qtr. No.IV/25.
P.O. Kunjaban, Agartala – 799006,
West Tripura.

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Principal Secretary to the Government of Tripura,
   Education Department (School), West Tripura, Pin No.799010.

2. The Director of School Education, Directorate of
   School Education, Government of Tripura,
   Agartala – 799001, West Tripura.

.....Respondent(s)

**W.P. (C) No.342/2015**

Smt. Sudipta Datta
D/O. Late Surendra Chandra Datta,
Green Velly Apartment,
Bholananda Palli, P.O. – Khatalbagan,
Agartala, West Tripura,
Pin Code – 799006.

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Secretary of Education (School) Department,
   New Secretariat Building, Capital Complex, Agartala,
   West Tripura, Pin Code - 799010.

2. The Director of School Education,
   Government of Tripura,
   Agartala, West Tripura, Pin Code – 799001.

.....Respondent(s)

**W.P. (C) No.60/2016**

Sri Nirmal Chandra Acharjee,
S/O. Lt. Hemendra Chandra Acharjee
Of Indranagar (Acharjee Para),
P.O. – Abhoynagar,
Agartala, Tripura (W), Pin – 799005.

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Principal Secretary to the Government of Tripura,
   Education Department (School), P.O. – New Capital Complex,
   799010, West Tripura.

2. The Director of School Education,
   Government of Tripura,
   Agartala – 799001, Tripura West.

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3. The Secretary of the Finance Department,
   Government of Tripura,
   New Capital Complex, Agartala, West Tripura.

.....Respondent(s)

**W.P. (C) No.61/2016**

Sri Rabindra Chandra Bhowmik,
S/O. Lt. Hiralal Bhowmik
Of Dhaleswar, P.O. – Dhaleswar,
P.S. – East Agartala,
Agartala, Tripura (W), Pin-799007.

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Principal Secretary to the Government of Tripura,
   Education Department (School), P.O. – New Capital Complex,
   799010, West Tripura.

2. The Director of School Education,
   Government of Tripura,
   Agartala – 799001, Tripura West.

3. The Secretary of the Finance Department,
   Government of Tripura,
   New Capital Complex, Agartala, West Tripura.

.....Respondent(s)

**W.P. (C) No.62/2016**

Sri Tapan Kumar Deb
S/O. Lt. Sailesh Chandra Deb
Of Ramnagar Road No.8,
Agartala, Tripura (W), Pin – 799002.

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Principal Secretary to the Government of Tripura,
   Education Department (School), P.O. – New Capital Complex,
   799010, West Tripura.

2. The Director of School Education,
   Government of Tripura,
   Agartala – 799001, Tripura West.

3. The Secretary of the Finance Department,
   Government of Tripura,
   New Capital Complex, Agartala, West Tripura.

.....Respondent(s)

**W.P. (C) No.63/2016**

Smt. Debasri Chakrabarti
W/O. Dr. Subrata Kr. Bhattacharjee
Of College Tilla, P.O. – Agartala College,
Agartala, Tripura (W), Pin – 799004.

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Principal Secretary to the Government of Tripura,
   Education Department (School), P.O. – New Capital Complex,
   799010, West Tripura.

2. The Director of School Education,
   Government of Tripura,
   Agartala – 799001, Tripura West.

3. The Secretary of the Finance Department,
   Government of Tripura,
   New Capital Complex, Agartala, West Tripura.

.....Respondent(s)

HIGH COURT OF TRIPURA
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**W.P. (C) No.66/2016**

Sri Badal Chakraborty
S/O. Lt. Kamala Kanta Chakraborty
Of Bhati Abhoynagar, P.O. – Agartala,
Tripura (W), Pin – 799006.

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Principal Secretary to the Government of Tripura,
   Education Department (School), P.O. – New Capital Complex,
   799010, West Tripura.

2. The Director of School Education,
   Government of Tripura,
   Agartala – 799001, Tripura West.

3. The Secretary of the Finance Department,
   Government of Tripura,
   New Capital complex, Agartala, West Tripura.

.....Respondent(s)

**W.P. (C) No.67/2016**

Sri Manoj Kumar Nath,
S/O. Lt. Manindra Ch. Nath
Of Bhati Abhoynagar,
P.O. – Agartala. Tripura (W).
Pin-799001.

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Principal Secretary to the Government of Tripura,
   Education Department (School), P.O. – New Capital Complex,
   799010, West Tripura.

2. The Director of School Education,
Government of Tripura,
Agartala – 799001, Tripura West.

3. The Secretary of the Finance Department,
Government of Tripura,
New Capital Complex, Agartala, West Tripura.

.....Respondent(s)

**W.P. (C) No.78/2016**

Sri Pradip Kumar Saha
S/O. Matilal Saha
Of Indranagar,
Near Yuba Sanghtha Club,
P.O. – Indranagar, P.S. – N.C.C,
Agartala, Tripura (W), Pin-799006.

.....Petitioner(s)

Versus

1. The State of Tripura,
Represented by Principal Secretary to the Government of Tripura,
Education Department (School), P.O. – New Capital Complex,
799010, West Tripura.

2. The Director of School Education,
Government of Tripura,
Agartala – 799001, Tripura West.

3. The Secretary of the Finance Department,
Government of Tripura,
New Capital Complex, Agartala, West Tripura.

.....Respondent(s)

**W.P. (C) No.84/2016**

Sri Nirmal Kumar Sutradhar
S/O. Lt. Rajani Sutradhar
Of Vill – Indranagar Acharjee Para,

P.O. – Abhoynagar, Agartala,
Tripura (W), Pin – 799005.

.....Petitioner(s)

Versus

1. The State of Tripura,
   Represented by Principal Secretary to the Government of Tripura,
   Education Department (School), P.O. – New Capital Complex,
   799010, West Tripura.

2. The Director of School Education,
   Government of Tripura,
   Agartala – 799001, Tripura West.

3. The Secretary of the Finance Department,
   Government of Tripura,
   New Capital Complex, Agartala, West Tripura.

.....Respondent(s)

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For Petitioner(s) : Mr. S. Deb, Sr. Advocate.
Mr. P.K. Pal, Advocate.
Mrs. S. Deb (Gupta), Advocate.

For Respondent(s) : Mr. D. Bhattacharjee, GA.
Mr. M. Debbarma, Addl. GA.
Mr. D. Sharma, Addl. GA.
Mr. Arijit Bhowmik, Advocate.

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**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**
**HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing : 03.03.2020.

Date of delivery of Judgment & order : 21.8.2020

Whether fit for reporting : Yes.

HIGH COURT OF TRIPURA

## JUDGMENT & ORDER

***(Akil Kureshi, CJ)***.

Though individual facts differ, central issues involved in this group of petitions are common. These petitions have been heard together and would be disposed of by this common judgment.

2. W.P.(C) No. 272 of 2015 was treated as a lead case. Facts from the said petition would be noted at some length. In the rest of the petitions we may make a brief reference of the relevant facts.

3. In W.P.(C) No. 272 of 2015, petitioner Smti. Panna Chakraborty has the qualification B. Sc. (Honours) (Biology). She was appointed as an Assistant Teacher (Science Graduate) in a Government school on 03.05.1984 in the Middle school section in the pay scale of Rs.560-1300/- as provided in Tripura Civil Services (Revision of pay) Rules, 1982 (hereinafter to be referred to as 'ROP, 1982').

4. The pay scales of the Government employees were revised under Tripura Civil Services (Revised pay) Rules, 1988 (hereinafter to be referred to as 'ROP 1988) with effect from 01.01.1986. Under these Rules, pay scale of Rs.560 – 1300/- was revised to Rs.1300 – 3220/-. In the year

1993, the petitioner was placed in the higher scale of pay of Rs.1450 – 3710/- which correspondents to the pre-revised scale of Rs.600 – 1440/- pursuant to the Office Memorandum dated 07.12.1992 issued by the Finance Department, Government of Tripura. This was done with retrospective effect for notional purposes from 01.01.1988; actual benefit would be paid after 31.12.1991.

5. Thereafter, upon completion of 7 years, the petitioner was placed in the next higher scale of Rs.1700 – 3980/- with effect from 01.01.1995 under Office Order dated 24.05.1996. According to the petitioner, while giving this benefit, her pay was not correctly fixed in terms of Fundamental Rule 22 (a)(i).

6. The pay scales of the State employees were further revised under Tripura Civil Services (Revised Pay) Rules, 1999 ('ROP 1999' for short). The Government of Tripura issued a clarification dated 09.04.1999 which provided that any scale advancement to an Assistant Teacher by virtue of training under ROP 1988 shall be treated as first benefit under Career Advancement Scheme introduced under ROP 1999, 7 years service being qualifying service for 2nd CAS, he or she would be entitled to get next higher scale advancement after completion of 7 years service in the Trained Post Graduate scale on or after 01.01.1999.

7. The petitioner was granted a higher pay scale of Rs.6500 – 12300/- (under ROP 1999) with effect from 01.01.2002 considering it as the benefit of CAS 2 after completion of 7 years service in the pre-revised scale of Rs.1700 – 3980/-. Subsequently however, the Finance Department, Government of Tripura issued a clarification under O.M. dated 17.02.2005 in which it was provided that any movement to higher pay scales on acquiring higher qualifications should be treated as movement under CAS (modified) of the ROP 1999. Relying on the said clarification, the Department was of the view that the petitioner was not entitled to the benefit of CAS 2 (which was granted in the year 2002) on the ground that grant of higher pay scale of Rs.1450 – 3710/- with effect from 01.01.1988 would be treated as granting the benefit of CAS 1. When she was granted further scale advancement to Rs.1700 – 3980/- with effect from 01.01.1995, the same would amount to availing the benefit of CAS 2. The petitioner would be entitled to benefit of CAS 3 on completion of 29 years of regular service if by then she had not been promoted. Director of School Education, Government of Tripura, accordingly, issued a Circular dated 23.09.2005 and provided that pay of the concerned teachers be re-fixed accordingly. As per these clarifications and directions, pay of the petitioner was re-fixed in the lower scale of Rs.5500 – 10700/- corresponding to pre-revised scale of Rs.1700 – 3980/- with effect from

01.01.2002. Consequently, a sum of Rs.2530/- which was the difference in salary was recovered from the petitioner's pay. According to the petitioner, these actions were wholly impermissible and illegal. The pay fixation previously carried out was correct and could not have been in any case revised without hearing the petitioner nor could recovery of alleged overpayment have been made without hearing.

8. To complete factual narration, it may be noted that Tripura Public Service Commission (TPSC) had issued an advertisement No.5 of 2004 for direct recruitment to the post of Headmaster/Headmistress for the High schools. The petitioner applied for the post. She was selected and recommended by TPSC pursuant to which she was appointed as a Headmistress, High School in the pay scale of Rs.7450 – 13000/- under order dated 01.06.2006. She was joined her duty on the said post on 01.07.2006.

9. In such background, petitioner's grievances are three fold:

(i) At the time of placing her in the scale of Rs.1700 – 3980/-, her pay was not correctly fixed with reference to FR 22 (a) (i).

(ii). The petitioner was correctly granted the benefit of CAS 2 with effect from 01.01.2002 and placed in the pay scale of Rs.6500 – 12300/-. This

benefit was illegally and without following the principal of natural justice withdrawn by unilateral decision by the Government.

(iii) In any case, upon completion of 29 years of service, she was entitled to CAS 3 benefit which so far has not been granted.

10. She accordingly prayed that her pay be correctly fixed in the scale of Rs.1700 – 3980/- with effect from 01.01.1995, that the benefit of CAS 2 in scale of pay of Rs.6500 – 12300/- be restored with effect from 01.01.2002 and lastly, that she may be granted the benefit of CAS 3 with effect from 03.05.2009 upon completion of 29 years of service.

11. Respondents have appeared and filed a written reply in which the case of the respondents is that the petitioner was appointed as an Assistant Teacher, Middle/High School in the year 1984 in the scale of pay of Rs.560 – 1300/-, which was meant for Graduate Teachers. Under office order dated 07.12.1992, she was placed in the next higher scale of Rs.1450 – 3710/- as she possessed the degree of B.Sc. (Hons.). Thereafter, upon completion of 7 years of service, she was placed in the next higher scale of Rs.1700 – 3980/- with effect from 01.01.1995 as per ROP, 1988. It is pointed out that the system of CAS was introduced in ROP, 1999. Initially there was no clarification on whether the teachers like the petitioner, who had been provided higher scale for possessing higher qualifications would

be granted further CAS or not. This aspect was clarified by Finance Department in Circular dated 17.02.2005. Accordingly, the event of allowing higher pay scale to the petitioner with effect from 01.01.1988 on account of holding higher qualification was considered as CAS 1. Upon completion of 7 years of service thereafter, she was placed in the next higher scale. The same was to be treated as CAS 2. She was thus not entitled to CAS 3, which was wrongly granted to her in the year 2002. She would be entitled to CAS 3 only after completion of 29 years of service.

12. The respondents have also disputed the petitioner's claim that her pay was not correctly fixed as per FR 22(a)(i).

13. The respondents have relied on a decision of learned Single Judge of this Court in case of ***Yunuch Mia Sarkar vs. The State of Tripura and others*** dated 16.07.2015, ***W.P. (C) No.179 of 2008*** in which somewhat similar issues had come up for consideration. A detailed reference to this decision would be made at a later stage.

14. We may now briefly refer to facts in other cases. In W.P. (C) No.273 of 2015, the petitioner was holding the qualification of B.Sc. (Biology). She was appointed as an Assistant Teacher on 07.05.1984 in the pay scale of Rs.560 – 1300/- meant for Untrained Graduate Teachers. She

obtained the qualification of Post Graduate degree (M. Sc. Biology) on 28.08.1984. She was placed in the next higher pay scale of Rs.1450 – 3710/- with effect from 01.01.1988 vide O.M. dated 07.12.1992. She was granted a higher pay scale of Rs.1700 – 3980/- after completion of 7 years of service in the previous scale under office order dated 06.06.1997. She was thereafter placed in the higher scale of Rs.6500 – 12300/- treating it as CAS 2 with effect from 01.01.2002. This benefit was withdrawn vide letter dated 02.08.2010 on the ground that she was not entitled to CAS 2. The pay of the petitioner was fixed in the lower scale of Rs.9570 – 30000/- corresponding to pre-revised scale of Rs.5500 – 10700/- with effect from 01.01.2006. In addition to challenging these actions, petitioner contends that she also not been granted the benefit of CAS 3 though it is due to her.

15. In W.P. (C) No.274 of 2015, the petitioner held the qualification of B. Sc. (Biology). She was appointed as an Assistant Teacher with effect from 24.01.1985 in the pay scale of Rs.560 – 1300/-. She obtained a degree of M. Sc. (Biology) on 22.03.1985. She was placed in the scale of pay of Rs.1450 – 3710/- with effect from 01.01.1988 pursuant to O.M. dated 07.12.1992. Upon completion of 7 years of service thereafter, she was placed in the higher scale of Rs.1700 – 3980/- with effect from 01.01.1995. She was granted the benefit of higher scale of Rs.6500 – 12300/- after completion of further 7 years of service with effect from

01.01.2002. This was withdrawn vide letter dated 23.09.2005 on the ground that she had already received the benefit of two Career Advancements. Accordingly, her pay was fixed in the lower scale of Rs.9570 – 30000/- with effect from 01.01.2006 pursuant to ROP, 2009, which corresponded to pre-revised scale of Rs.5500 – 10700/-. She also contends that in any case, she has not been granted the benefit of CAS 3 though due to her.

16. In W.P. (C) No.277 of 2015, petitioner has a qualification B. Sc. (Biology). She was appointed as an Assistant Teacher on 10.05.1984 in pay scale of Rs.560 – 1300/-. She obtained the degree of M. Sc. (Biology) on 28.08.1984. She was placed in the higher scale of Rs.1450 – 3710/- with effect from 01.01.1988. She was thereafter placed in the higher scale of Rs.1700 – 3980/- with effect from 01.01.1995 after completion of 7 years of continuous service in the previous scale. She was granted the pay scale of Rs.6500 – 12300/- after completion of further 7 years of service with effect from 01.01.2002 treating it as CAS 2. This benefit was withdrawn vide letter dated 23.09.2005. The petitioner was thereafter appointed to the post of Headmistress by direct recruitment made through TPSC. She joined the said post on 26.04.2006.

17. In W.P. (C) No.342 of 2015, the petitioner has a qualification of M.A. in Bengali. She was appointed as an Assistant Teacher on 30.12.1986 in the pay scale of Rs.560 – 1300/-. She was placed in the next higher pay scale of Rs.1450 – 3710/- with effect from 01.01.1988. After completion of 7 years thereafter, she was placed in the scale of Rs.1700 – 3980/- with effect from 01.01.1995. She was placed in a higher scale of Rs.6500 – 12300/- after completion of further 7 years of service with effect from 01.01.2002 by way of CAS 2. Upon implementation of ROP, 2009 with effect from 01.01.2006, her pay was fixed in the revised scale of Rs.9570 – 30000/- with Grade Pay of 2600. She contends that upon completion of 25 years of service she was entitled to CAS 3, which has not been granted.

18. In W.P. (C) No.62 of 2016, the petitioner was appointed as an Assistant Teacher (Primary school) in the pay scale of Rs.430 – 850/- on 05.03.1986. Pursuant to O.M. dated 07.12.1992, the petitioner's pay was fixed in the scale of Rs.1300 – 3220/- with effect from 01.01.1988, which corresponded to a pre-revised higher scale of Rs.560 – 1300/-. Upon completion of 7 years of service thereafter, the petitioner was allowed to move as a Trained Graduate Teacher and granted the pay scale of Rs.1450 – 3710/- with effect from 01.01.1995, which was revised to Rs.5000 – 10300/- under ROP, 1988. The petitioner's pay was fixed in the next higher pay scale of Rs.5500 – 10700/- with effect from 01.01.2002 upon

completion of 7 years of service as a Trained Graduate Teacher treating it as CAS 2. Such benefit was withdrawn by a unilateral action. The petitioner contends that he is entitled to the benefit of ACP 3 after completion of 25 years of service, which has not been granted to him. The petitioner also contends that he was appointed as an Assistant Teacher with a qualification of Bachelors degree. He ought to have been granted the pay scale of Rs.560 – 1300/- from the beginning for holding the qualification of Bachelor's degree. The petitioner has also challenged the O.M. dated 17.02.2005 issued by the Finance Department.

19. In W.P. (C) No.60 of 2016, the petitioner was appointed as an Assistant Teacher in Primary school in the pay scale of Rs.430 – 850/- on 16.09.1980. He acquired the Graduate degree on 07.12.1992. He was granted the pay scale of Rs.1300 – 3220/- with effect from 01.01.1988 corresponding to pre-revised scale of Rs.560 – 1300/-. He was thereafter granted the scale of Trained Graduate Teacher of Rs.5000 – 10300/- with effect from 01.01.1995 corresponding to pre-revised scale of Rs.1450 – 3710/-. He was granted the scale of Rs.5500 – 10700/- with effect from 01.01.2002 by way of CAS 2 pursuant to O.M. dated 17.02.2005. This benefit was withdrawn without hearing the petitioner. His pay was fixed in lower scale of Rs.5000 – 10300/-. Besides disputing this action of the Government, petitioner contends that in any case, he is entitled to ACP 3

upon completion of 25 years of service. The petitioner has challenged the O.M. dated 17.02.2005.

20. In W.P. (C) No.61 of 2016, petitioner was appointed as an Assistant Teacher (Secondary) in the pay scale of Rs.560 – 1300/- on 25.03.1986. Petitioner obtained a Master's degree on 19.07.1988. Pursuant to Finance Department's O.M. dated 07.12.1992, the petitioner was granted the scale of pay of Rs.1450 – 3710/- corresponding to pre-revised scale of Rs.600 – 1440/- with effect from 19.7.1988, however, the same would have notional effect from 19.7.1988 to 31.12.1991. Upon completion of 7 years on the same day, the petitioner was granted the scale of Rs.5500 – 10700/- with effect from 01.01.1995 corresponding to pre-revised scale of Rs.1700 – 3980/- assigned to Trained Post Graduate Teachers. After completion of 7 years thereafter, the petitioner was granted the benefit of CAS 2 when he was placed in the scale of Rs.6500 – 12300/-. This benefit was withdrawn on 25.01.2006 by the department relying on clarification contained in O.M. dated 17.02.2005. Petitioner opposes this action and also contends that in any case, he is entitled to the benefit of ACP 3 upon completion of 25 years of service. Petitioner argues that grant of higher scale with effect from 19.07.1988 upon his acquiring the Masters degree should be treated as a fresh appointment since under the Recruitment Rules, for the post of Assistant Teachers, there is no provision for promotion from Secondary to

Higher Secondary section. The petitioner also challenges O.M. dated 17.02.2005.

21. In W.P. (C) No.66 of 2016, petitioner was appointed as an Assistant Teacher (Secondary school) in the pay scale of Rs.560 – 1300/- on 23.03.1985. The petitioner was granted the next higher scale of Rs.600 – 1440/- with effect from 01.01.1988 under order dated 10.08.2000 after the petitioner obtained Honours degree on 01.05.1987. Subsequently, pursuant to O.M. dated 07.12.1992, the petitioner was granted the benefit of pay scale of Rs.600 – 1440/- from 01.01.1988. However, the same would be notional till 31.12.1991. Upon completion of further 7 years of service, the petitioner was granted the pay scale of Rs.5500 – 10700/- corresponding to the scale of Rs.1700 – 3980/- provided for Trained Post Graduate Teachers. After 7 years more, the petitioner was granted the benefit of CAS 2 with effect from 01.01.2002. His pay was fixed in the scale of Rs.6500 – 12300/-. Relying on O.M. dated 17.02.2005, this benefit was withdrawn. The pay of the petitioner was re-fixed in the lower scale of Rs.5500 – 10700/-. Petitioner contends that in any case, he is entitled to benefit of ACP 3 upon completion of 25 years of service, which has not been granted. He also contends that his appointment as Assistant Teacher (Higher Secondary school) after he acquired the Master's degree on 19.07.1998 was a fresh appointment since under the Rules; there is no

provision for promotion of an Assistant Teacher from Secondary to Higher Secondary section.

22. In W.P. (C) No.63 of 2016, the petitioner was appointed as an Assistant Teacher (Secondary) in the pay scale of Rs.560 – 1300/- on 02.11.1987. After the petitioner obtained the Honours degree on 01.05.1987, by a subsequent order pursuant to O.M. dated 07.12.1992, the petitioner's pay was fixed in the scale of Rs.1450 – 3710/- corresponding to pre-revised scale of Rs.600 – 1440/- with effect from 01.01.1988, which would be treated notionally till 31.12.1991. 7 years later, the petitioner was allowed to move to the higher scale of Rs.5500 – 10700/- corresponding to the scale of Rs.1700 – 3980/- for Trained Post Graduate Teachers. Unlike other cases, this petitioner was not granted the benefit of next higher scale by way of CAS 2. She contends that the same ought to have been given after completion of 7 years of service. In any case, she is entitled to benefit of ACP 3 upon completion of 25 years of service, which has also not been granted.

23. In W.P. (C) No.67 of 2016, the petitioner was appointed as an Assistant Teacher (Primary) in a scale of pay of Rs.430 – 850/- on 29.09.1986. Pursuant to O.M. dated 07.12.1992, he was placed in the scale of Rs.1300 – 3220/- with effect from 01.01.1988 corresponding to

the pre-revised scale of Rs.560 – 1300/-. He was thereafter placed in next higher scale of Rs.5000 – 10300/- after 7 years with effect from 01.01.1995, which corresponded to the pay scale of Rs.1450 – 3710/- provided for Trained Graduate Teachers. He was granted the next higher scale of Rs.5500 – 10700/- as CAS 2 with effect from 01.01.2002. The petitioner contends that relying on subsequent classification, such benefit cannot be withdrawn. Petitioner further contends that he is entitled to the benefit of ACP 3 upon completion of 25 years of service.

24. In W.P. (C) No.78 of 2016, the petitioner had the requisite qualification of B.A. He was appointed as an Assistant Teacher on 01.08.1982 in the pay scale of Rs.430 – 850/-. With effect from 01.01.1988, he was granted the higher pay scale of Rs.1300 – 3220/- corresponding to pre-revised scale of Rs.560 – 1300/-. This was pursuant to the Government O.M. dated 07.12.1992. For the period between 01.01.1988 to 31.12.1991, such benefit would be only notional, actual difference in salary would be paid thereafter. After completion of 7 years from the said date in the scale of Untrained Graduate Teacher, he was allowed pay upgradation in the scale of Trained Graduate Teacher of Rs.1450 – 3710/- with effect from 01.01.1995. This was treated as CAS 1. His pay was fixed in the next scale of Rs.5500 – 10700/- with effect from 01.01.2002 by way of CAS 2. Such benefit was withdrawn and recovery of

differential pay was made by the respondents on the basis of the Memorandum dated 17.02.2005 issued by the Finance Department. The petitioner contends that the same was illegal and unlawful and in any case, he was entitled to benefit of CAS 3 upon completion of 25 years of service, which has not been granted to him.

25. In W.P. (C) No.84 of 2016, petitioner was appointed as an Assistant Teacher (Primary) in the scale of Rs.430 – 850/- on 05.03.1986. He was granted the next higher scale of Rs.1300 – 3220/- (revised) with effect from 01.01.1988, which corresponded to pre-revised scale of Rs.560 – 1300/-. He was granted the next higher scale of Rs.5000 – 10300/- with effect from 01.01.1995 i.e. after 7 years corresponded to the pre-revised scale of Trained Graduate Teachers of Rs.1450 – 3710/-. He was placed in next higher scale of Rs.5500 – 10700/- by way of CAS 2 with effect from 01.01.2002. This was withdrawn pursuant to O.M. dated 17.02.2005. In addition to challenging this, the petitioner contends that in any case, he is entitled to the benefit of ACP 3 upon completion of 25 years of service which benefit has not been granted. He also contends that he had a Bachelor's degree in Arts at the time of his appointment. From the beginning therefore his pay should have been fixed in the scale of Rs.560 – 1300/-.

26. In such a background, learned senior counsel Mr. S. Deb led the arguments on behalf of the petitioners and submitted that the stand of the Department was wholly incorrect. He submitted that the petitioners were correctly granted the benefit of CAS 2 in the year 2002. Such benefits were withdrawn without any show cause notice or opportunity of hearing granted to the petitioners. Previous benefits of higher pay fixations were not by way of promotion but by virtue of acquisition of higher qualification or being treated as a Trained Teacher after rendering 7 years of service as an Untrained Teacher. Both these benefits were inherently embedded in the Service Rules and Regulations. Such benefits cannot be treated either as promotions or pay upgradation. The respective petitioners were granted the benefits of higher pay scales upon satisfaction of certain conditions such as acquisition of higher qualification or completion of 7 years of service as untrained teachers upon which as per Government decisions they were eligible for grant of higher pay scale. Counsel further submitted that the benefits of CAS 1, 2 and 3 flow from Rule 10 of ROP, 1999 such benefits granted under the statute cannot be taken away by executive instructions i.e. Office Memorandum dated 07.12.2005. In the guise of clarification, through executive instructions, the effect of statutory Rules cannot be whittled down.

27. Mrs. S. Deb (Gupta), learned counsel appearing for some of the petitioners in addition to adopting the arguments canvassed by senior counsel Mr. Deb submitted that some of the petitioners possessed higher educational qualifications such as Graduation or Post Graduation at the time of their appointments. They therefore from the outset ought to have been placed in the higher pay scales prescribed for Graduate or Post Graduate teachers, as the case may be. She further submitted that in some of the cases, the petitioners have acquired such higher qualifications after joining service. By virtue of acquisition of such higher educational qualifications, the petitioners were entitled to be granted appropriate pay scales in the higher scale. Such benefit would not deprive the petitioner from claiming the benefits of CAS. She submitted that O.M. dated 07.12.2005 is opposed to the statutory Rules and is therefore illegal and should be set aside.

28. It was contended by both the advocates that in any case all the petitioners have completed requisite number of years of service for grant of CAS/ACP 3 which has not been granted to them. They relied on a decision of Division Bench of this Court in case of ***Sri Amarendra Bhattacharjee vs. The State of Tripura and others, W.P. (C) No.408 of 2008*** and connected petition dated 11.12.2014. We would refer to this decision at a later stage.

29. On the other hand, learned counsel Mr. Arijit Bhowik appeared for the Department and opposed the petitions. In W.P. (C) No.272 of 2015, he pointed out that the petitioner was appointed as an Assistant Teacher in the scale of pay of Rs.560 – 1300/-. She was not granted the scale of Rs.600/- - 1440/- as no such scale existed for Assistant Teachers (Middle/High school). For possessing B.Sc. Honours degree, she was granted one scale advancement with effect from 01.01.1988. She was granted another scale advancement upon completion of 7 years of service with effect from 01.01.1995. Thereafter, she was not entitled to CAS 2 since she had already availed the benefit of two scale advancements. CAS 2 was wrongly granted with effect from 01.01.2002, which was withdrawn after clarification was issued under O.M. dated 17.02.2005. Similar arguments were made for all other petitions also. He relied on a decision of a Single Judge in case of ***Yunuch Mia Sarkar (supra)***. He submitted that all the petitions are hopelessly barred by delay and laches. All the petitioners are raising issues which arose several years back. Petitions should be dismissed only on this ground of inaction on part of the petitioners for a long time.

30. At first, we may address the issues raised in W.P. (C) No.272 of 2015 and adopt the conclusions with necessary modifications in other

cases. For the purpose of present petitions, we need not go beyond ROP, 1982. Under the said Rules, the post of Assistant Teachers was provided in three grades. In the Higher Secondary school, Middle school and Primary school. For Assistant Teacher (Primary), scale of pay prescribed was Rs.430 – 850/- , for Middle school basic scale was Rs.560 – 1300/-. Scale of Rs.600 – 1440/- was meant for certain teachers. For Higher Secondary school, Rules prescribed pay scale of Rs.600 – 1440/-. Under ROP, 1988, which were brought into effect from 01.01.1986, these scales were revised as under:

| | | | | | |
|---|---|---|---|---|---|
| 110. | A. | HIGHER SECONDARY SCHOOL<br>Assistant Teacher (including erstwhile Lecturer). 600-1440 | Selection Grade Teacher<br>Trained Teacher.<br>Un-trained Teacher | 650-1595 | 2000-4410<br>1700-3980<br>1450-3710 |
| | B. | MIDDLE STAGE AND HIGH STAGE SCHOOLS.<br>Assistant Teacher. i) 600-1440 (as personal to certain teachers).<br>ii) 560-1300. | Selection Grade Teacher<br>Trained Teacher.<br>Un-trained Teacher | 650-1595<br>(as personal to certain teacher).<br>600-1440 | 1700-3980<br>1450-3710<br>1300-3220 |
| | C. | PRIMARY/JUNIOR BASIC SCHOOLS.<br>Assistant Teacher (including classical and other teachers in the Middle and High Stage schools in the scale of Rs.430-850 | Selection Grade Teacher<br>Trained Teacher.<br>Un-trained Teacher | 470-1025 | 1300-3220<br>1250-2890<br>970-2400 |

31. These Rules contained certain clarificatory notes, which read as under:

Note-1:- Movement from Un-trained grade to trained grade and from trained grade to selection grade:-

(General) (i) New appointment shall be made as Un-trained or trained Teacher according as the appointee is Un-trained or Trained.

(ii) An Un-trained Teacher shall be eligible for the revised scale of trained teacher after successful completion of prescribed training or after 7 years of service as un-trained teacher in the respective level of school, whichever is earlier.

(iii) A teacher shall be eligible for promotion to selection grade post after he has completed 10 years of service as trained teacher in the respective level of school.

iv) In case of promotion to selection grade posts belonging to Group B, the required procedure shall be followed.

Note-2:- Determination of revised scale for fixation of pay under these rules:-

(For existing employees) (i) In case of a trained teacher or in case of an untrained teacher who has completed 7 years of service in the respective level of school on 1-1-86 or on the date of coming over to the revised scale, pay in the revised scale shall be directly fixed in the revised scale prescribed for Trained Teacher

(ii) In case of a trained teacher who has completed 10 years of service as trained teacher or in case of an untrained teacher who has completed 17 years of service in the respective level of school on 1-1-86 or on the date of coming over to the revised scale as untrained teacher, pay in the revised scale shall be directly fixed in the revised scale prescribed for Selection Grade Teacher.

Provided that where the Selection Grade post belongs to Group B, pay shall be fixed in the revised scale prescribed for 'Trained Teacher' and the employee concerned shall be promoted to the post of Selection grade after the Service Rules are finalised in consultation with the Appointment & Services Department and Finance Department and with the approval of the T.P.S.C."

32. The pay scales of the Government employees underwent further revision under ROP, 1999 with effect from 01.01.1996. Existing scale of

pay of Rs.1300 – 3220/- was revised to Rs.4200 – 8650/-, scale of Rs.1450 – 3710/- was revised to Rs.5000 – 10300/- and scale of Rs.1700 – 3980/- was revised to Rs.5500 – 10700/-.

33. The Scheme for Career Advancement known as CAS was introduced under Rule 10 of ROP, 1999, relevant portion of which reads as under:

> "10. CAREER ADVANCEMENT SCHEME (MODIFIED) WITH EFFECT FROM 01.01.1999
>
> The State Government employees will have scale advancement by way of promotion, failing which by time bound movement in a higher scale as per table in Annexure 'A' after entry into service in the whole service life in the following manner:
>
> (a) The employees entering by direct recruitment in scale no.1 as per statement at Annexure – A or corresponding scale earlier will have 3 scale advancement at the end of 10, 7 and 7 years of continuous and satisfactory service in the scale 1, 2 & 3 to the scale 2, 3 and 4 respectively unless they get promoted to a post of higher scale before the period at each stage.
>
> (b) The employees entering by direct recruitment in the existing scales no.4 to 10 or revised scale no.5 to 11 or corresponding earlier scale will have 2 scale advancement in next higher scales as per table in Annexure 'A' at the end of 10 and 7 years of continuous & satisfactory service in the entry scale and higher scale of promotion/gradation or advancement respectively, as the case may be, to the higher scales unless they get promoted to higher scale before the prescribed period at each stage.
>
> (c) The employees entering by direct recruitment in the scale above 5500-10700 (pre-1996 scale of 1700-3980 or pre-1986 scale of 780-1780 or corresponding earlier scale) will have one scale advancement in the next higher scale as per table in Annexure 'A' at the end of 10 years of continuous

& satisfactory service in the entry scale unless they get promoted to higher scale before the prescribed period.

(d) The employees of Cadre service will have scale advancement as prescribed in the Annexure-B. This will also be effective from 01-01-1999.

(e) In the case of time bound advancement to higher scale pay will be fixed under FR 22 (a) (i)."

34. By virtue of the Tripura State Civil Services (Revised Pay) (Third Amendment) Rules, 1999, Note 4 was added as under:

> "NOTE NO.4:- If a teacher has been allowed the first higher pay scale on successful completion of training or on direct entry with training or on completion of 7 years of service, as the case may be, under T.S.C.S. (Revised pay) Rules, 1988, this shall be treated as CAS-I under the T.S.C.S. (Revised Pay) Rules, 1999. Thereafter CAS-2 shall be available only on completion of another 7 yrs. of service in the first higher pay scale. For other teachers, existing CAS Rules shall be applicable."

35. The entitlement of an employee for being placed in the next higher scale of pay by way of Career Advancement flows from Rule 10 of ROP, 1999. This rule provides that a Government employee will have scale advancement either by way of promotion, failing which by time bound movement in a higher scale as per clause (a) of Rule 10, employees entering by direct recruitment would have 3 scale advancements at the end of 10, 7 and 7 years of continuous and satisfactory service unless they get promoted to a post of higher scale before the period at each stage.

36. We may also note that Rule 10 has a proviso. Clause (iii) of the said proviso provides as under:

> "(iii) The existing employees who have already availed the prescribed no. of scale advancements by way of promotion or gradation under part B or C of TSCS (Revised pay) rules 1988 as per Rule 5(3) thereof as on 01-01-1999 after entry in the service, will not be eligible for any further advancement."

37. Thus, fundamentally for the grant of career advancement, it is necessary that the employee has neither received promotion nor received upgradation of scale of pay before the completion of requisite number of years of service for a particular career advancement.

38. In case of the petitioner in W.P. (C) No.272 of 2015, she was appointed as an Assistant Teacher in the year 1984 and granted the pay scale of Rs.560 – 1300/- assigned to the said post meant for Graduate Teachers. Since she had the qualification of B.Sc. Honours, by conscious decision, the Government in general terms provided that such employees would be granted a higher pay scale of Rs.1450 – 3710/- corresponding to pre-revised scale of Rs.600 – 1440/-. Such benefit will be given with retrospective effect from 01.01.1988. Such effect would be notional for the period between 01.01.1988 till 31.12.1992. After completion of 7 years from the said date, with effect from 01.01.1995, she was granted the

benefit of the next higher scale of Rs.1700 – 3980/-. This was possibly by virtue of completion of 7 years as an untrained teacher. We may recall that under Note 2, below the prescription for revised scale for Assistant Teachers in ROP, 1988, it is provided that an Untrained Teacher shall be eligible for revised scale of trained teacher after successful completion of prescribed training or after 7 years of service as untrained teacher in the respective level of school, whichever is earlier. Thus, an untrained teacher would be granted the scale of a trained teacher after the teacher undertakes such training or completes 7 years of service. Apparently, in the case of the petitioner, this benefit was granted after 7 years. That is how she was placed in the scale of Rs.1700 – 3980/- with effect from 01.01.1995. By then, thus, the petitioner had availed two scale upgradations. Firstly, she was granted the higher scale by virtue of the decision of the Government under office order dated 07.12.1992, when she was placed in the higher scale of Rs.1450 – 3710/- from the initial scale of Rs.560 – 1300/- since she had the higher qualification of B.Sc. Honours. Second scale upgradation was given to the petitioner after 7 years, when she was granted the pay scale prescribed for a trained teacher of Rs.1700 – 3980/- with effect from 01.01.1995. Upon introduction of ROP, 1999, her pay was fixed in the revised scale of Rs.5500 – 10700/- with effect from 01.01.1996. Thereafter, there was no scope for granting her the benefit of CAS 2. As noted, under Rule 10 of ROP, 1999 benefit of CAS would be

available to an employee, who has neither received promotion nor pay upgradation for a requisite number of years of service. Since the petitioner had received two such pay upgradations, she no longer had the claim for CAS 2. She could claim CAS 3 only if she did not get promotion or pay upgradation before completion of 29 years of service, which was required at the relevant time. This aspect was clarified by O.M. dated 17.02.2005. Certain clarifications were sought by the departments as to whether grant of higher pay scales/advance increment granted to Graduate and Under Graduate Teachers of the Education Department on acquiring higher qualification would be treated as upward movement for the Career Advancement Scheme framed under ROP, 1999. In this respect, it was clarified that "after careful consideration of all aspects, it is clarified that movement to higher pay scales on acquiring higher qualification should be treated as movement under CAS (modified) of TCS (ROP) Rules, 1999." This clarification only makes eloquent, which is already embedded in Rule 10 itself. Entire purpose of providing the benefit of career advancement was for those employees, who on account of non-availability of promotional posts and promotional avenues, stagnate in the same cadre and in the same pay scale for years together, should have sufficient service incentives. Under the said Scheme, as noted, upon completion of the requisite number of years of service without promotion or pay upgradation, the employee would be placed in next higher scale of pay. The petitioner

herein had already availed two such pay upgradations. First pay upgradation was granted to her when the Government by general decision decided to upgrade the pay of Assistant Teachers, who had higher qualifications. This decision was implemented with retrospective effect from 01.01.1998. However, the employee would get notional benefits for the period between 01.01.1988 to 31.12.1992 and actual benefits thereafter. The second pay upgradation was granted to the petitioner with effect from 01.01.1995 by granting her pay scale of Trained Teacher upon completion of 7 years of service in the scale as an Untrained Teacher. This was possibly by virtue of Note 2 in the revision of pay under ROP, 1988. When under Rule 10 of ROP, 1999 Career Advancement Scheme was introduced; it was provided that existing employees, who have already availed the prescribed number of scale advancements by way of promotion or gradation under ROP, 1988 after entry in service, will not be eligible for any other advancement. In other words, those employees, who already had availed of pay upgradations under ROP, 1988, cannot claim the benefit of CAS again under ROP, 1999. We, therefore, do not find that in this respect, the stand of the Department is incorrect in any manner.

39. Grant of pay scales and particularly, the benefit of upgradation in pay scales are matters which are governed by service rules, regulations and Government decisions. No Government employee has a vested right in

claiming higher pay scale unless the same is prescribed by the Government under any statutory rule, regulation or an administrative decision having force of law. Career Progression or Career Advancements flow from schemes framed by the Government either under respective Revision of Pay Rules or through executive instructions. These benefits are provided to the employees to ensure that in case employees are not promoted to the next higher post on account of non-availability of vacancies in such promotional cadres, they can at least get the benefit of pay fixation in the promotional scales. In other words, an employee, who stagnates in the said cadre for requisite number of years of service without promotion, would be granted promotional scale as per the Government regulations. On the other hand, an employee who has already received actual promotion or pay upgradation without promotion, cannot seek further Career Advancement, which would be opposed to every philosophy of granting the benefits of Career Advancement or Career Progression. In any case, such issues would be governed by the prevailing rules, regulations and executive instructions.

40. Learned Single Judge of this Court in case of ***Yunuch Mia Sarkar (supra)*** has dealt with a similar issue. However, when this judgment was cited by the respondents before the learned Single Judge, during hearing this group of petitions, he had certain doubts about the correctness of this

decision. By an order dated 27.11.2017, therefore, he requested that these petitions be placed before Division Bench since he could not accept the view expressed by the Single Judge in case of ***Yunuch Mia Sarkar (supra)***. We have dealt with this issue independently and therefore do not need to go into the intricacies of the decision in case of ***Yunuch Mia Sarkar (supra)***.

41. We may also record that all the petitioners have moved these petitions after several years of their grievances having arisen. All the petitioners dispute the action of the department in unilaterally withdrawing the higher pay scale and carrying out recovery of excess pay pursuant to clarification contained in O.M.dated 17.04.2005. These petitions were filed nearly 10 years later. Some of the petitioners have argued that at the time of their appointment, it was wrongly placed in the lower scale of pay. These appointments took place in the 1980s. These petitions are filed merely 30 years after. Learned counsel for the respondents, was therefore, correct in drawing our attention to such laches on part of the petitioners. However, wrong pay fixation is seen as a continuous cause of action arising month to month. Reference to following decisions would be sufficient:

In case of ***M.R. Gupta vs. Union of India and others***, reported in ***(1995) 5 SCC 628***, the Supreme Court in the context of the limitation for

filing application before the Central Administrative Tribunal by Government servant questioning this incorrect pay fixation, and observed as under:

> "6. The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (AIR 1950 FC 1)."

42. In case of ***Union of India and others vs. Tarsem Singh***, reported in ***(2008) 8 SCC 648***, the Supreme Court referred to the said decision in case of ***M.R. Gupta (supra)*** and further clarified the position as under:

> "7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties,

> then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

43. Once again, the said decision in case of ***M.R. Gupta (supra)*** was relied upon in case of ***State of Madhya Pradesh and others vs. Yogendra Shrivastava***, reported in ***(2010) 12 SCC 538***. It was held that claim for higher allowances or pay in continuous wrong, the bar of limitation of principle of delay or laches would not apply in such cases. However, the benefit of the higher allowance or pay for the past period can be regulated. Following observations may be noted:

> "18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three

> years prior to the date of the original application. [See: M.R. Gupta vs. Union of India - 1995 (5) SCC 628."

44. These petitions therefore, cannot be dismissed only on the ground of delay and laches. However, even if any of the petitioners succeed in persuading us to grant any relief, such relief shall have to be moulded. The petitioners cannot claim benefit for long number of years, which passed before filing of the petitions.

45. In case of the petitioner in W.P. (C) No.272 of 2015, her claim for ACP 3 is also not valid. We have noticed that she applied for direct recruitment as Headmistress for which TPSC had issued advertisement in the year 2004. She was selected and appointed in the said post on 01.06.2006. Thus, she has broken her umbilical cord with the erstwhile engagement as an Assistant Teacher. She is no longer part of the said service. She now is a direct recruit Headmistress. She cannot carry the baggage of past service for grant of promotions. A claim for CAS 3 or ACP 3, whatever we call it, could have arisen only if she had continued in the said cadre. Having changed the service completely by virtue of direct recruitment as Headmistress, she cannot maintain the claim for CAS 3. She has also not made out any case of incorrect pay fixation under F.R. 22. In connection with the benefit of CAS 3, facts of WP(C) 277 of 2015 are also

similar. In that case also the petitioner had been directly appointed as Headmistress. She also cannot maintain claim for CAS 3.

46. We may now apply these conclusions to the remaining cases. Cases of all other petitioners also would follow the same logic. With minor modifications in finer factual details, all the cases provid a common pattern. All the petitioners were granted the benefit of pay upgradation with effect from 01.01.1988 under O.M. dated 07.12.1992. Under this O.M., the Government decided to grant higher pay scale to those teachers, who had higher educational qualifications. All these petitioners-Teachers were thereafter placed in next higher scale of pay upon completion of 7 years of service from 01.01.1988. This appears to be on the basis of the completion of 7 years as Untrained Teachers. As per the then prevailing rules, a teacher would be granted higher pay scale when he completes the necessary training or renders 7 years of service as an Untrained Teacher. All these petitioners, thus, were equated with Trained Teachers after gaining 7 years of experience as Untrained Teachers. They thus, received second financial upgradation with effect from 01.01.1995. They were thereafter, not entitled to the benefit of CAS 2. In their cases, the benefit which was granted, was later on withdrawn. Once a teacher has received two pay upgradations in the manner noted above, he or she no longer has a valid claim to CAS 2 benefits. The concerned teacher must wait till the

stage is ripe for CAS 3. In case of all these petitioners, thus, the prayer for restoration of the benefit of higher pay fixation previously thought to be CAS 2 and which was later on withdrawn, after Government clarification dated 17.02.2005, cannot be granted.

47. Some of these petitioners have raised the issue of their wrong pay fixation from the inception. We may recall, their advocates had argued that since these teachers held higher qualifications such as Honours Graduate degree or Post Graduate degree at the time of their appointments, they should have been placed in higher scale. We do not think that there is any validity in this argument also. As per the available material on record, which has been brought to our notice, it was for the first time that the Government was decided under the O.M. dated 07.12.1992 to grant higher pay scale to those teachers, who have higher educational qualifications. All these petitioners were appointed prior to the said date. At the time of their appointments on the respective posts, there was no provision for grant of higher pay scale on the basis of only higher educational qualifications. Some of these teachers acquired higher educational qualification after appointment. In their case is also, the same logic would apply. They can claim higher pay scale only in terms of the rule prescribing such benefit. When the Government consciously decided to grant higher pay scale under O.M. dated 07.12.1992 and granted limited retrospective effect of such

decision from 01.01.1988, the petitioners can claim such benefits as they flow from the said O.M. They cannot claim the pay fixation in the higher scale prior to 01.01.1988 from the date they were appointed in service or from the date they acquired such higher qualifications.

48. Heavy reliance was placed on the decision of Division Bench of this Court in case of ***Sri Amarendra Bhattacharjee (supra), W.P. (C) No.408 of 2008*** and connected petition dated 11.12.2014. In the said case, the petitioner Amarendra Bhattacharjee was appointed as Assistant Teacher in a Primary School on 02.05.1969 in the pay scale of Rs.125 – 200/-. He acquired the qualification of Graduation in the year 1970 and was appointed as Substitute Teacher on 12.08.1970. Thereafter, a fresh order of appointment was issued in his favour on 08.05.1972 whereby the Secretary of the School, which was a Private School, appointed him as an Assistant Teacher in the Secondary Section in the pay scale of Rs.175 – 325/-. He retired from the said post of Assistant Teacher on 31.06.2006. In the context of the benefit of Career Advancement, the question that came up for consideration before the Court was whether the appointment of the said petitioner as Assistant Teacher in the Secondary School Section was by way of promotion or fresh appointment. Noting that the employer and the State both had stated that it was a fresh appointment and that under the relevant rules for appointment of Assistant Teacher, there was no provision

for promotion from Primary Section to Secondary Section, it was held that such appointment was by way of fresh recruitment and not by way of promotion. Since the Government had denied the benefit of Career Advancement, treating the appointment of the said petitioner as Assistant Teacher by way of promotion, the decision was reversed. It was directed that he would be entitled to the benefit of Career Advancement at appropriate stage. Facts in the present cases are entirely different. Firstly, the case of ***Amarendra Bhattacharjee (supra)*** was governed by the then pay rules. Secondly, his appointment as an Assistant Teacher in primary section of the school when he was still Under Graduate, his acquisition of Graduation degree thereafter and his fresh appointment as an Assistant Teacher in the secondary section of the school were unrelated events. His fresh appointment as an Assistant Teacher in Secondary Section was treated as a direct recruitment and not by way of promotion.

49. Some of the petitioners have challenged the O.M. dated 17.02.2005. This O.M. is merely clarificatory in nature and has been issued by the Government to streamline the procedure for grant of Career Advancement since doubts were raised by certain departments. We find that this O.M. merely brought out the true rule position as it existed at the relevant time. We do not think that the O.M. suffers from any illegality.

50. The petitioners have also argued that withdrawal of higher pay scale and in some cases pay recoveries were made with hearing. We find that the petitioners cannot succeed only on this ground. All the petitioners through their advocates have argued the grievances on all grounds not confining their cases to the question of non hearing. When after such full-fledged hearing we have decided the issues on merits, question on hearing the petitioners by the authorities in facts of these cases becomes academic.

51. We are, however, unable to appreciate why those petitioners, who have in any view of the matter, become entitled to get the benefit of CAS 3, have not so far been granted. Except in case of the petitioners in W.P. (C) Nos.272 of 2015 and 277 of 2015 where we have held that since they had been appointed as Headmistresses as direct recruits, they would not be entitled to benefit of CAS 3, rest of the petitioners have in any case completed requisite number of years of service without promotion. The respondents in their replies have not cited any reasons why these petitioners are not entitled to such benefits. If by now such benefits have not been granted, we would require the Government to grant the same without any further delay.

52. In the result, it is provided that the respondents shall consider the case of all the petitioners except the petitioners in W.P. (C) Nos.272 of

2015 and 277 of 2015 for grant of CAS 3 benefits from the due dates, if not already granted. Entire exercise shall be completed within a period of 6 (six) months from today. The rest of the prayers of all the petitioners are rejected.

53. All petitions are disposed of. Pending application, if any, also stands disposed of.

**(ARINDAM LODH), J** **(AKIL KURESHI), CJ**

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HIGH COURT OF TRIPURA
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