HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.633/2020

Sri Jatan Roy

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

Along with

WP(C) No.634/2020

Sri Chinmoy Deb

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

WP(C) No.635/2020

Sri Sujit Kumar Sutradhar

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

WP(C) No.636/2020

Sri Binay Dey

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

WP(C) No.637/2020

Sri Krishna Pada Ghosh

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

WP(C) No.638/2020

Sri Raju Dey

----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

For Petitioner(s)	:	Mr. C.S. Sinha, Advocate, Ms. S. Chisim, Advocate.
For Respondent(s)	:	Mr. Debalay Bhattacharjee, G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

10/12/2020

These petitions arise in common background. They would be disposed of by this common order. For convenience facts may be noted from WP(C) No.633 of 2020.

2. Petitioner is a Government teacher. His grievance is that he has not been granted training incentive which is in a nature of an advance increment simply because he had completed the training after 01.01.2009. It is undisputed that under Tripura State Civil Services (Revised Pay) Rules,

2009 the previous pattern of providing training incentive was substantially modified. Rule 13 of the said rules pertain to training incentive. Sub-rule (1) of Rule 13 provides that modified scheme for training incentives would be implemented in supersession of earlier circulars and notifications of the said implications of the State Government and so the teachers instead of receiving one increment would receive a lump sum incentive ranging from Rs.1,500/- to Rs.3000/- depending on the grade of the teacher. This modified incentive scheme will take effect from 01.01.2009 for all teachers who have completed training on or after the said date. Since the petitioner had completed his training after 01.01.2009, he missed out the training incentive of one increment, instead he received a lump sum payment. He has, therefore, prayed that he may be granted one increment as training incentive under Rule 13(1)(v) of the Tripura State Civil Services (Revised Pay) Rules, 2009. This prayer he supports on the basis of an allegation that he was not sent for training earlier and on account of which he could not undertake the training before 01.01.2009. He has cited certain instances where teachers who had joined in service after him were sent for training ahead of him and on account of which they would have received the training incentive of one increment. Petitioner relies on an order dated 29.11.2018

passed in ***WP(C) No.650 of 2015*** in case of ***Sri Sankar Chandra Sen vrs. The State of Tripura & others***.

3. For several reasons there is no merit in these petitions. The petitioners have not questioned the validity of the said rule which modified the earlier pattern of providing one increment by way of training incentive, nor have they questioned the cutoff date of 01.01.2009. In any case, this Court in earlier occasions had turned down any such challenge. In fact, in case of ***Sankar Chandra Sen*** (supra) the Division Bench had specifically held that such cutoff date cannot be stated to be arbitrary. If that be so, the petitioners cannot claim benefit dehors the provisions of the said rules.

4. The petitioners' grievance that they were not sent for training earlier when their juniors were sent, also cannot be examined in these petitions. As per the allegations of the petitioners, the juniors were sent for training prior to 01.01.2009 and petitioners thereafter. The ROP, 2009 were framed in the year 2009. The petitioners' grievances thus arose nearly 11 years back. At no point of time the petitioners raised any grievance about their juniors being sent for training ignoring their rightful claims. They cannot approach the Court after such long delay raising a stale issue. Significantly, the petitioners would have received a lump sum amount by

way of training incentive under Rule 13(1)(v) of the ROP, 2009. Having accepted such incentive, that too several years before, the petitioners cannot now turn around and complain about not being granted increment in their pay scales.

5. In case of ***Smt. Sachirani Talukder (Datta) vrs. The State of Tripura and others*** in ***WP(C) No.1372 of 2019*** and other connected petitions somewhat similar issues came up for consideration where it was held and observed as under:

> "[8] We may first clear the position emerging from the decision of this Court in case of ***Sankar Chandra Sen***(*supra*). In the said petition also the petitioner had challenged the said Rule 13(1)(v) of the Pay Rules of 2009. Such challenge was in fact rejected by the High Court making following observations:
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> > *"5. From the material placed on record, despite best efforts put in by the learned counsel, we are of the considered view that nothing could be pointed out, inviting attention as to how the legislation, fixing the cut-off date is arbitrary in nature. It is also not the case of the writ petitioner that the Legislatures had no competence. Hence, we reject the prayer in so far as it pertains to the quashing of the legislation is concerned."*

However, the petitioner therein was granted benefit of one increment as a special case making following observations:

> "6. Coming to the second issue, we notice that in Para 19 of the petition, the writ petitioner has pointedly furnished particulars of such of those employees who were similarly situated and have received the benefits termed as training incentive. These persons namely, Sri Subhasis Mudak, Sri Dilip Kr. Majumder, Smt. Soma Mandal and Sri Kripal Kanti Bhowmik are not only junior to the writ petitioner but in fact, received the incentives prior to the cutoff date.
>
> 7. The learned Advocate General states that in the peculiar facts and circumstances of the instant case, such benefits shall also be afforded to the writ petitioner. We are highly appreciative of the stand taken by the learned Advocate General.
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> 8. Ordered accordingly. ***However, we clarify that it is only in the peculiar facts of the instant case that such a concession stands made, which shall not be treated as a binding precedent in future.***"

The Division Bench thus consciously recorded that the said order would not form binding precedent in future. This group of petitions thus call for a decision on merits.

[9] For several reasons, the prayers of the petitioners cannot be granted. Firstly, as observed by the Division Bench

in case of ***Sankar Chandra Sen***(*supra*), I do not find any illegality or unconstitutionality in Rule 13(1)(v) of the Pay Rules of 2009. Rule 13 pertains to training incentive. Sub-Rule (1) of Rule 13 provides that in supersession/ modifications of the existing circulars, notifications issued by the State Government relating to training incentives, following provisions are made ……

Clause (v) of Sub-Rule (1) reads as under:

"(v) In respect of following categories of employees the existing system of providing training incentive in the form of one increment is replaced with lump sum incentive grant indicated in table below:

Category of training	**Category of employee involved**	**Duration of training**	**Lump sum incentive amount**
B. Ed.	Teacher	One year	Rs.3000/-
T.Ed.	Teacher	Six months	Rs.2000/-
CETE	Teacher	Six months	Rs.2000/-
UGBT	Teacher	One year	Rs.2500/-
CPE	Teacher	Six months	Rs.1500/-
VLW training	Agri Asst	1 + 1=2 years	Rs.2500/-
Forestry training	Forester	One year	Rs.2500/-
B.P. Ed	PI (recruited under old RR	One year	Rs.3000/-
Accounts	Clerks	Six months	Rs.2000/-

Note: This system of providing lump sum incentive grant will take effect from 1st January, 2009 for all cases who have completed training on or after 1.1.2009."

[10] By virtue of the said sub-rule thus the existing system of providing one increment in the form of training incentive was replaced with lump sum payment which was

fixed at different amounts for different categories of employees. Note below Clause (v) of Sub-Rule (1) to Rule 13 clarifies that this change will take effect from 01.01.2009 for all cases of employees who have completed training after the said date.

[11] The decision of the government to grant training incentive by giving one increment to those employees who completed such training, was a policy decision, brought into effect through the Pay Rules of 1999. It was always open for the Government to make modification in such incentive which would depend on its policy and the burden on the exchequer. Under the Pay Rules of 2009 this incentive was modified from granting one increment to providing a lump sum payment. There is nothing discriminatory or beyond the power of the rule making authority to make this modification. Even the cutoff date of 01/01/2009 is in no way arbitrary or discriminatory. It coincides with the introduction of the revised pay rules and date of 01/01/2009 so chosen thus is not without relevance.

[12] The petitioners' sole grievance which would have warranted further consideration was that it was not within their power to be nominated for training and in their cases the seniority was disregarded when the Government sent the junior teachers for training. It was on account of this that the petitioners lost out on being covered by the previous regime of one increment by way of training incentive which survived till 31.12.2008. However, any such claim of the petitioners must be seen as a stale and hopelessly belated claim. In fact

the petitioners had acquiesced with the change in the Government policy when they accepted the lump sum payment upon completion of training as per Rule 13(1)(v) of the Pay Rules. Several years later they cannot turn around and say that they had been wronged by not giving one increment by way of training incentive as was done in case of those who had completed the training before 1/1/2009. The petitioners are possibly persuaded to file the present set of petitions in view of the judgment of Division Bench of this Court in case of ***Sankar Chandra Sen***(*supra*). Till such decision was rendered the petitioners did not feel aggrieved by payment of lump sum instead of one increment. The petitioners cannot contend that since a somewhat similarly situated employee has been granted such benefit by the judgment of this Court recently, the delay in approaching the Court should be ignored. Such a contention was resoundingly rejected by the Supreme Court in a Constitution Bench judgment in case of ***Mafatlal Industries Ltd. and others Vrs. Union of India and Others;*** reported in ***(1997) 5 SCC 536*** propounding the principle that each person must fight his own battle. In the said well known decision, one of the issues considered by the Supreme Court was whether a person can approach a Court of law challenging the levy (of excise or custom as a case may be) several years after it is levied on the ground that the High Court or the Supreme Court had in a similar case declared such levy illegal. The conclusions in the judgment (by Jeevan Reddy, J speaking for majority) in this respect may be noted:

"(108) ****

(iv) It is not open to any person to make a refund claim on the basis of a decision of a court or tribunal rendered in the case of another person. He cannot also claim that the decision of the court/tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment or levy has become final in his case, he cannot seek to reopen it nor can he claim refund without re-opening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund.

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(viii) The decision of this Court in STO v. Kanhaiya Lal Mukundlal Saraf must be held to have been wrongly decided insofar as it lays down or is understood to have laid down propositions contrary to

> the propositions enunciated in (i) to (vii) above. It must equally be held that the subsequent decisions of this Court following and applying the said propositions in Kanhaiya Lal have also been wrongly decided to the above extent. This declaration - or the law laid down in Propositions (i) to (vii) above - shall not however entitle the State to recover to taxes/duties already refunded and in respect whereof no proceedings are pending before any authority/Tribunal or Court as on this date. All pending matters shall, however, be governed by the law declared herein notwithstanding that the tax or duty has been refunded pending those proceedings, whether under the orders of an authority, Tribunal or Court or otherwise."

[13] This is certainly not a case of a continuous wrong. The petitioners were offered lump sum payment upon completion of training which was in substitution of one increment which was previously granted. The petitioners accepted such lump sum payment years back. At no point of time, the petitioners raised any grievance about the said Rule 13(1)(v) being unconstitutional or they not having been sent for training earlier when according to them their right had ripened. Even if their substitution in the incentive happened by virtue of the Pay Rules of 2009, when the petitioners were superseded by juniors for being sent for training, they had a cause of grievance since completion of training late would result in late releasing of an increment which itself would be a

loss to the petitioners. They never questioned not being sent for training earlier.

[14] For all such reasons, petitions must fail and are dismissed."

6. All the petitions are dismissed.

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

(AKIL KURESHI), CJ

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HIGH COURT OF TRIPURA
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