HIGH COURT OF TRIPURA
AGARTALA

W.P(C) No.1372/2019

Smt. Sachirani Talukder(Datta).

----Petitioner(s)

Versus

The State of Tripura and Others.

----Respondent(s)

W.P(C) No.1373/2019

Smt. Anjana Paul.

----Petitioner(s)

Versus

The State of Tripura and Others.

----Respondent(s)

W.P(C) No.1374/2019

Smt. Rakhi Roy.

----Petitioner(s)

Versus

The State of Tripura and Others.

----Respondent(s)

W.P(C) No.1375/2019

Sri Arjun Majumder.

----Petitioner(s)

Versus

The State of Tripura and Others.

----Respondent(s)

W.P(C) No.1376/2019

Smt. Manika Saha.

----Petitioner(s)

Versus

The State of Tripura and Others.

----Respondent(s)

W.P(C) No.722/2019

Smt. Haribala Debnath.

----Petitioner(s)

Versus

The State of Tripura and Others.

----Respondent(s)

W.P(C) No.723/2019

Sri Radha Krishna Majumder.

----Petitioner(s)

Versus

The State of Tripura and Others.

----Respondent(s)

W.P(C) No.724/2019

Sri Pradip Majumder.

----Petitioner(s)

Versus

The State of Tripura and Others.

----Respondent(s)

W.P(C) No.725/2019

Sri Japan De.

----Petitioner(s)

Versus

The State of Tripura and Others.

----Respondent(s)

W.P(C) No.726/2019

Sri Nimai Datta.

----Petitioner(s)

Versus

The State of Tripura and Others.

----Respondent(s)

BEFORE

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For Petitioner(s) : Mr. A. Acharjee, Advocate.
Ms. R. Purkayastha, Advocate.

For Respondent(s) : Mr. D. Bhattacharjee, Govt. Adv.
Mr. D. Sharma, Addl. Govt. Adv.

Date of hearing & judgment : ***2nd January, 2020.***

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

These petitions arise in common background and involve identical challenge. They have been heard together and would be disposed of by this common judgment. For the sake of convenience, we may record facts from Writ Petition(c) No.1372 of 2019 which are as under:

[2] Petitioner has challenged Rule 13(1)(v) of Tripura State Civil Services (Revised Pay) Rules, 2009 (hereinafter to be referred to as the Pay Rules of 2009). By the said sub-rule the existing system of providing training incentive in the form of one increment was replaced with lump sum incentive. This change was brought into effect from 01.01.2009. Case of the petitioner is that this demarcation of completion of training before and after 01.01.2009 is illegal and unlawful.

[3] The petitioner was appointed to the post of Graduate Teacher in the Education Department of State of Tripura on purely temporary basis on fixed pay of □1500/- per month under order dated 12.03.1997. In due course the petitioner was brought in regular by scale. Presently, the petitioner is posted in a Govt. school at Belonia, South Tripura. Under the Revision of Pay Rules of 1999(Pay Rules of 1999 for short) there was a provision made for granting training incentive in form of one increment upon successful completion of the departmental training to those employees who had appointed on or after 01/01/1996. This was modified by virtue of Rule 13(1)(v) of the Pay Rules of 2009. The existing system of granting one increment in form of incentive was replaced by a lump sum payment. This modification was made effective from 1.1.2009 and would apply to those employees who completed training after the said date.

[4] The case of the petitioner is that though the petioner was one of the senior teachers, under memo dated 15.07.2005 when as many as 3589 teachers were sent for training, the petitioner’s name was excluded. In the subsequent list of 2007 for

sending teachers for training also the petioner was excluded. Finally, it was only after January, 2009 that the petitioner was sent for such training which he successfully completed.

[5] Facts in all cases are similar and are therefore, not separately recorded. In background of such facts the petitioners' challenge to the impugned rule is that (i) the same makes an artificial distinction between those teachers who had completed the training before 01.01.2009 and those who completed thereafter and (ii) in case of the petitioners, the factum of their completing the training after 01.01.2009 was on account of wholly fortuitous circumstance namely the department not sending them for such training earlier, ignoring their seniority.

[6] Counsel for the petitioners have placed heavy reliance on a decision of the Division Bench of this Court dated 29/11/2018 passed in Writ Petition(c) No. 650.2015 in case of ***Sri Sankar Chandra Sen Vrs. State of Tripura and Others.*** In the context of approaching the Court late, they argued that firstly, the petitioners were agitating their grievance before the Government and secondly, after the decision of this Court in case of ***Sankar Chandra Sen****(supra)* in which the Court had granted benefit to a similarly situated teacher, the petitioners have filed these petitions. In this context they have placed reliance on the decision of learned Single Judge of this Court in case of ***Hiralal Debnath Vrs. State of Tripura and Anr.*** reported in ***(2017) 1 TLR 458*** to argue that mere delay in approaching the Court would not defeat the legitimate rights. It was also contended that the present one is a

continuous wrong and therefore the challenge can be raised at any time.

[7] On the other hand, the Govt. Advocate opposed the petitions raising following contentions: (i) the Rule 13(1)(v) of the Pay Rules of 2009 indicates the policy decision of the Government. The same being not discriminatory or violative of Article 14 of the Constitution, is not vulnerable. The petitioners have not shown how the said statutory provision is ultra vires the constitution or beyond the rule making power of the authority; (ii) there is gross delay and latches on the part of the petitioners in filing the petitions; (iii) all the petitioners had accepted the lump sum incentive envisaged in Rule 13(1)(v) of the Pay Rules of 2009. They now cannot challenge the rule; (iv) the decision of this Court in case of ***Sankar Chandra Sen****(supra)* did not lay down a ratio which can be applied in a present cases; (v) that at the relevant time the petitioners had not filled up their forms for training in time and on account of which they could not be nominated for training when others were sent.

[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:

> *"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.
>
> 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 warramted 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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> ***** ****** ***** *****
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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.

(AKIL KURESHI),CJ.

Dipankar

HIGH COURT OF TRIPURA
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