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

W.P. (C) No.295/2019

Smt. Sangita Reang and others

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.354/2019

Sri Anuroy Debbarma and others

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.355/2019

Smt. Asha Kaloi

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1012/2019

Smt. Reshmi Dey

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.296/2019

Smt. Bandana Das and others

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.677/2019

Sri Ratan Chandra Das

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1013/2019

Smt. Ruma Das

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1014/2019

Smt. Laxmi Dey (Mitra)

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1155/2019

Sri Sukanta Das

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1156/2019

Sri Sajit Sarkar

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1157/2019

Sri Abhijit Choudhury

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1158/2019

Smt. Rinku Das

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1159/2019

Sri Banikantha Sharma

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1160/2019

Sri Rabindra Ch. Nath

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1161/2019

Smt. Jayita Bhattacharya

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1162/2019

Smt. Sunanda Gon Choudhury

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1043/2019

Sri Narayan Das and another

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

HIGH COURT OF TRIPURA
सत्यमेव जयते

W.P. (C) No.1062/2019

Sri Subodh Malakar and others

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1070/2019

Sarifa Begum

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1071/2019

Sri Sibu Datta

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1072/2019

Smt. Sarmistha Dhar

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1260/2019

Smt. Srabanti Chakraborty

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1099/2019

Sri Taher Miah

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1210/2019

Sri Rakesh Das and others

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1211/2019

Sri Malin Datta and another

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1215/2019

Smt. Sagarika Das and others

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1234/2019

Sri Rajib Das and another

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1235/2019

Smt. Rabibala Debbarma

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1237/2019

Sri Santosh Debbarma

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

HIGH COURT OF TRIPURA
सत्यमेव जयते

W.P. (C) No.1238/2019

Sri Mithun Deb

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1280/2019

Smt. Payel Deb

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1281/2019

Smt. Gita Gope

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1283/2019

Smt. Urmila Datta

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1284/2019

Md. Sabir Ahmed

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

W.P. (C) No.1303/2019

Smt. Tilottama Deb

.....Petitioner(s)

Versus

The State of Tripura and others

.....Respondent(s)

| | |
|---|---|
| For Petitioner(s) | : Mr. Somik Deb, Advocate.<br>Mr. P. Roy Barman, Advocate.<br>Mr. Arijit Bhaumik, Advocate.<br>Mr. Kawsik Nath, Advocate.<br>Mr. Anujit Dey, Advocate.<br>Mr. Ankan Tilak Paul, Advocate. |
| For Respondent(s) | : Mr. Debalay Bhattacharjee, GA.<br>Mr. M. Debbarma, Addl. GA.<br>Mr. Rajib Saha, Advocate.<br>Mr. S. Ghosh, Advocate. |

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

Date of hearing and judgment : 29.01.2020.

Whether fit for reporting : Yes.

**JUDGMENT & ORDER(ORAL)**

These petitions arise in similar background. However, there are some internal differences of facts. The central issue and broad considerations being common, these petitions have been heard together and would be disposed of by this common judgment. To the extent facts differ, the petitions would be divided in different categories so that each category of cases would have common relevant facts.

2. At the outset, we may record brief background leading to the present group of petitions. All the petitioners were recruited by the State of Tripura as Teachers in the State Government schools in the year 2010. There are three cadres of teachers in the Government schools namely, Under Graduate Teachers, Graduate Teachers and Post Graduate Teachers, each requiring different educational qualifications. The selection process through which the petitioners and other large number of teachers were recruited in

the year 2010 and thereabouts was challenged in a bunch of petitions before the High Court. Division Bench of this Court in case of ***Tanmoy Nath and others vs. State of Tripura and others*** reported in ***(2014) 2 TLR 731*** found that such recruitment process suffered from various irregularities. The Court held that the entire policy of the State Government was bad because it gave no guidelines. Resultantly, the Court was of the opinion that entire selection shall have to be set aside. While doing so, in order to see that the education of young children does not suffer, the Court directed that the concerned teachers whose selections have been set aside shall continue to function in their present place of postings till 31.12.2014. The Court granted further directions laying down broad guidelines to follow for future selections. In the later portion of the judgment, the Court clarified that if the persons who were selected in the previous selection are again selected then the service rendered by them earlier shall be counted for the purpose of seniority, pension and all other purposes. Relevant portion of the judgment of this Court in case of ***Tanmoy Nath (supra)*** may be noted:

> "Relief
>
> 121. It has been urged that even if we set aside the selections, our judgment should be prospective in nature. It has also been urged by Mr. Sankar Deb, learned Sr. Counsel for the petitioners, that those portions of the policy which are bad may be severed and those portions which can be upheld may be retained, but the appointments already made need not be disturbed. Reliance has been placed on the judgments of the Apex Court in A.P. Public Service Commission v. K. Sudharshan Reddy and others,

(2006) 5 SCC 505, AIR 1957 SC 628, (2000) 7 SCC 719. These judgments have no applicability to the cases in hand and we are not all in agreement with this submission. The selections have been totally unfair. The selections have not been made in a transparent manner. The citizens of this country have not been treated equally. Most of the clauses of the policy are illegal and unconstitutional. The entire policy is bad because it gives no guidelines and, therefore, the entire selection will have to be, must be and is accordingly set aside.

122. Though we have set aside the selections, we are concerned with the education of the small children who are innocent and have no concern with the illegalities of the selection. We, therefore, direct that the teachers whose selections have been set aside shall continue to function in their present place of postings till 31-12-2014, i.e. the end of the academic session of this year.

THE FUTURE:

123. The State on or before 31-12-2014 must complete a fresh process of selection of teachers in all categories. In view of the discussions held above, we direct that the State should frame a new Employment Policy within two months from today and shall carry out selections in accordance with the fresh policy as early as possible and not later than 31-12-2014.

124. It is not for this Court to frame guidelines but if the State does not frame any guidelines, then the State shall follow the following directions while making selections. If the State frames its own guidelines, it must ensure that they are in tune with the law laid down by the Apex Court as discussed by us above and in light of the directions given hereinafter.

HIGH COURT OF TRIPURA

(i) Fresh applications shall be invited for all the posts;
(ii) Even those who have applied earlier will have to apply again though they may be given relaxation in age and no fees may be charged from them;
(iii) The State shall clearly set out the number of posts in each category of teachers;
(iv) In case of undergraduate teachers, the State if it is so advised may divide the posts sub-division wise so that the primary school teachers are local people as far as possible;
(v) In respect of graduate teachers, the State may divide the posts district wise;
(vi) In case of postgraduate teachers, there will be no zone wise division of posts;
(vii) In case the State decides to make division of posts region wise, as indicate hereinabove, then the candidates must be asked to apply only for one region of their choice. It should also be specified in the advertisements that once a candidate applies under any category then he shall not be permitted to change his category and the roll number should be allocated in such a fashion that the category and region of each candidate is clearly depicted in the roll number itself.
(viii) For each category of teachers, a written test preferably an objective (MCQ) test must be held;
(ix) This test should be conducted by an independent body like the Tripura Public Service Commission or the Tripura Central University;
(x) The test should be multiple choice question and the answer sheet should be checked through a computer keeping in view the large number of candidates involved;
(xi) At least 50% of the total marks shall be awarded on the basis of the performance in the written test, i.e. in case a candidate obtains 70 marks out of 100 in a

written test, 35 marks out of 50 shall be awarded to him towards the total assessment;

(xii). In the case of Post Graduate Teachers another 20 marks shall be awarded for the marks received in the qualifying course, i.e. B.A./B.Sc./B.Com (Honours) or post-graduation, i.e. M.A./M.Sc./M.Com. Therefore, if a candidate has obtained 50% marks in the qualifying course, he would get 10 out of 20 under this head. A candidate, who has higher qualifications, for example he is an Hons. Graduate and has also done his post-graduation or has done his post-graduation in 2(two) subjects, then he may be awarded 5 more. Similarly 5 more marks shall be awarded to those candidates who have obtained Ph. D. or similar qualifications. Since consistency has an important role, 5 marks each i.e. 10 marks shall be awarded for the marks obtained in Madhyamik and Higher Secondary examination respectively. Therefore, if a candidate has 40% marks in Madhyamik he will get 2 out of 5 and if he has 60% marks in Higher Secondary he will get 3 marks. Out of the remaining 10 marks which shall be awarded at the time of interview 5 marks shall be earmarked for extra-curricular activities i.e. sports, music, drama or NCC etc. but the State must lay down clear-cut guidelines as to how these marks have to be allotted. Therefore, the interview board will have the liberty to award 5 marks on the basis of oral interview.

(xiii). In case of Graduate Teachers, 50% marks shall be allocated for the performance in the written test, 20% marks for the marks obtained in the qualifying course i.e. Graduation, 5 marks on the basis of marks obtained in Higher Secondary and 5 marks for the marks obtained in Madhyamik and 10 marks shall be awarded on the basis of percentage of marks for candidates when done post graduate. Similarly, Out of the remaining 10 marks which shall be awarded at the

time of interview 5 marks shall be earmarked for extra-curricular activities i.e. sports, music, drama or NCC etc. and 5 for performance in interview.

(xiv). For Under Graduate Teachers 50% shall be allocated for performance in the written test, 10 marks for the marks obtained in Madhyamik, 10 marks for the marks obtained in Higher Secondary and 15 marks shall be awarded to those candidates who are qualified as per the NET guidelines i.e. they have passed TET or B. Ed or 2(two) years Diploma in Teaching. 5 Marks for higher qualifications. Out of the remaining 10 marks which shall be awarded at the time of interview 5 marks shall be earmarked for extra-curricular activities i.e. sports, music, drama or NCC etc. and 5 for performance in interview.

(xv). We may make it clear that 50% seats shall be filled in only on the basis of merit. In the State of Tripura the reservation is as follows :

Scheduled Tribe – 31%

Scheduled Caste – 17%

General Category - 52%

Therefore, if there are 1000 posts in a particular category of 'Teachers' at least 165 Scheduled Tribe candidates should be selected on the basis of merit amongst Scheduled Tribes, 85 candidates belonging to Scheduled Castes be selected on the basis of merit drawn out amongst the Scheduled Caste category and 260 out of the unreserved/general category shall be appointed strictly on the basis of merit drawn out as above.

(xvi). The State must also ensure that in accordance with the Persons with Disability Act and the law laid down by the Apex Court in a number of cases including Union of India and Anr. Vs. National Federation of the Blind and Ors., [(2013)10 SCC 772] adequate numbers of posts are reserved for persons with disabilities.

(xvii). In case the States so desires, it may reserve a small percentage of posts for Ex-servicemen or wards of those who have died fighting for the Country or have been severely disabled. However, the reservation under this head shall be horizontal and not above 5%. The number of posts in this category should also be clearly defined.

(xviii). The State may, if it so desires, also out of this 50% give some weightage to persons who have been waiting for the appointment for a long time. Therefore, there can be additional 20 marks to be awarded for seniority i.e. 1 mark for each year of seniority subject to a maximum of 20 marks. Similarly, the State may also give some weightage to members of the needy families out of these 50% posts and may allot 10 marks for those persons who belonged to the needy category. Therefore, the remaining 50% of posts the marking may be out of 130 i.e. 20 marks for seniority and 10 marks for need.

(xix). Effectively, those selected only on the basis of the merit shall be graded out of a maximum of 100 marks but for those who are given benefit of seniority and/or belonging to a poor family the marking will be out of 130 marks. It is, however, made clear that the State at the time of framing of the policy shall also lay down clear-cut guidelines how the needy families are to be identified. (i) The identification must be done on clearly set out criteria i.e. to say the upper income limit should be clearly defined. (ii) It should be clearly stated that no member of the family should be in government/organized employment. (iii) It should be clearly stated that the land of the family should be below a certain area. We also make it clear that any certificate given to a person said to be needy can be challenged by the unsuccessful candidates if they feel that this certificate has been wrongly given.

125. We would also like to make it clear that other than the benefits indicated by us above there can be no reservation/preference on the basis of age. There shall be no preference to dependent government servants or retired government employee or retrenched employees etc. There can be no reservation for linguistic or religious minorities or on area wise basis. **It is further made clear that if the persons who are selected in the previous selection are again selected then the service rendered by them earlier shall be counted for the purpose of seniority, pension and all other purposes**."

3. The State of Tripura challenged the said judgment of the Division Bench of this Court in case of ***Tanmoy Nath (supra)***. The Supreme Court by an order dated 04.08.2014 stayed the directions contained in paragraph-123 of the said judgment, which is reproduced hereinabove. The Supreme Court disposed of the appeal of the State Government finally by an order dated 29.03.2017, which order reads as under:

"We have heard learned counsel for the parties and perused the record. We do not find any ground to interfere with the impugned order.

While setting aside the selections, the High Court in Para 123 of the impugned order observed:

"123. The State on or before 31-12-2014 must complete a fresh process of selection of teachers in all categories. In view of the discussions held above, we direct that the State should frame a new Employment Policy within two months from today and shall carry out selections in accordance with the fresh policy as early as possible and not later than 31-12-2014. "

While issuing notice in the present matters this Court by its order dated 04.08.2014 stayed the directions contained in aforesaid para 123 of the impugned order.

**Since we do not find any ground to interfere with the impugned order, the directions in para 123 now required to be suitably modified. We, therefore, direct:**

(a) New Employment Policy should be framed by the State by 30th April, 2017 if not already framed and advertisements for filling up the vacancies may be issued latest by 31st, May, 2017.

**(b) The fresh selection process be completed on or before 31st December, 2017 and till the fresh process is completed, the teachers already appointed shall continue.**

(c) The candidates who participated in the selection process pursuant to the advertisements in question, whether selected or not, will be allowed to participate in the fresh selection process by relaxing their age but subject to their having necessary qualifications.

(d) The qualifications in the case of teachers governed by the provisions of the Right of Children to Free and Compulsory Education Act, 2009 shall be in conformity with the relevant statutory provisions of the said Act.

(e) The qualifications of teachers employed for Classes IX and above shall be strictly in compliance with the relevant provisions concerning such appointments.

Subject to the aforesaid modifications, the view taken by the High Court in the impugned order is affirmed and the special leave petitions are dismissed.

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

4. Since the exercise to be undertaken by the State Government within the time provided by the Supreme Court in the said order dated 29.03.2017 could not be completed, the Supreme Court granted extension by an order dated 14.12.2017, which reads as under:

> "Upon hearing the counsel the Court made the following
>
> O R D E R
>
> We have heard learned counsel for the parties.
>
> Time granted by this Court in terms of order dated 24th October, 2017 is extended till 30th June, 2018, subject to condition that the judgment dated 29th March, 2017 will be strictly complied with. **On 31st December, 2017 the tenure of the incumbents will come to an end. Thereafter, their appointment will only for six months on ad-hoc basis on such fresh terms as the State Government may impose.**
>
> Thereafter, none of the said incumbents will continue.
>
> No further order in these applications (IA No.125638/2017, MA 1666/2017, MA 1760/2017, IA No.136810/2017, MA 1763/2017). The same are disposed of."

5. Such time limit has been extended from time to time by the Supreme Court. It is not necessary to refer to all such orders. Suffice it to say that the last extension has been granted by the Supreme Court up to 31st March, 2020 under order dated 01.11.2018, relevant portion of which reads as under:

> **"... Having considered the matter, we are of the view that at this stage, we ought to permit the State of Tripura to continue to avail of the services of the terminated teachers until the end of the academic session 2020, meaning the academic session 2019-2020. The above direction has been issued in the peculiar facts of the case and the circumstances which have confronted the State of Tripura and above all, the need to functioning of teaching activities in schools in the State of Tripura remains unaffected. ..."**

6. The State of Tripura had initiated the process for filling up some of the posts of teachers in all three categories namely, Under Graduate, Graduate and Post Graduate Teachers. A common advertisement was issued on 27.05.2017 for selection of notified vacancies for the posts of Graduate as well as Post Graduate Teachers. A similar but separate advertisement was issued also on 27.05.2017 inviting candidates to apply for the post of Under Graduate Teachers for filling up the number of notified vacancies. All the petitioners applied for selection and appointment pursuant to such advertisements in different categories for which they were qualified. As per para 124(ii) of the judgment in case of ***Tanmoy Nath (supra)*** they were required to apply afresh but would be given age relaxation. They had applied after obtaining proper permissions from the employer. It is undisputed that a common test was conducted for selection for the posts of Graduate and Post Graduate Teachers whereas a separate test was conducted for selection to the post of Under Graduate Teachers. A candidate could apply for multiple posts, as

long as he was qualified. Thus, a candidate could apply for both the posts of Graduate as well as Post Graduate Teacher but would be offered appointment if so selected, according to his performance in the selection test and availability of vacancies in the respective cadres. All the petitioners in these petitions were selected and also appointed pursuant to such selection process in different categories. In other words, some of the petitioners have been appointed as Under Graduate Teachers, some as Graduate Teachers and some as Post Graduate Teachers. Such appointment orders were issued in the year 2017 and 2018. They have been working on such posts since then. All the petitioners, however, have been placed in fixed salary and not on regular scale of pay. As per the Government policy, any fresh recruit in Group-C or D post would serve on fixed salary for a period of 5 years before he would be brought on regular scale. Based on such policy, all the petitioners have been placed in the fixed salary. They have not been granted regular pay scales.

7. The case of the petitioners is that by virtue of the judgment of this Court in case of ***Tanmoy Nath (supra)*** and the clarification made in paragraph-125 thereof upon their regular selection in the fresh selection process, their past service had to be protected which benefit the Government has not granted. The petitioners argue that their previous service rendered from the year 2010 onwards cannot be wiped out, particularly, in view of the clarification contained in paragraph-125 of the judgment of this Court in case of ***Tanmoy Nath (supra).*** They point out that

all petitioners were brought in regular scales of pay in the year 2015 upon completion of 5 years of service in fix salary. They now cannot be placed in fix salary all over again.

8. Factually, three different situations would arise and these petitions therefore would be bunched in such three broad categories. Category-I would be those cases where a teacher, who was previously selected and appointed on a particular post which selection and appointment was set aside by this Court in ***Tanmoy Nath (supra)*** is now through fresh selection process selected and appointed on the same post. Following petitions would fall in this category:

W.P. (C) No.1210 of 2019 and W.P. (C) No.1303 of 2019

9. Category-II would be cases where a teacher, who was previously selected and appointed on a particular post which selection and appointment has been set aside by this Court in case of ***Tanmoy Nath (supra)*** is now selected and appointed through fresh selection process to a post higher than one which he previously held. Following writ petitions fall in this category:

W.P. (C) No.295 of 2019, W.P. (C) No.354 of 2019, W.P. (C) No.1062 of 2019, W.P. (C) No.1211 of 2019, W.P. (C) No.1235 of 2019, W.P. (C) No.1237 of 2019 and W.P. (C) No.1234 of 2019.

10. Category-III would be those cases where a teacher, who was previously selected and appointed on a particular post which selection and appointment has been set aside by this Court in case of ***Tanmoy Nath (supra)***, is pursuant to fresh selection process

selected and appointed to a post lower than which he previously held. Following writ petitions fall in this category:

W.P. (C) No.296 of 2019, W.P. (C) No.355 of 2019, W.P. (C) No.677 of 2019, W.P. (C) No.1043 of 2019, W.P. (C) No.1012 of 2019, W.P. (C) No.1013 of 2019, W.P. (C) No.1014 of 2019, W.P. (C) No.1155 of 2019, W.P. (C) No.1156 of 2019, W.P. (C) No.1157 of 2019, W.P. (C) No.1158 of 2019, W.P. (C) No.1159 of 2019, W.P. (C) No.1160 of 2019, W.P. (C) No.1161 of 2019, W.P. (C) No.1162 of 2019, W.P. (C) No.1070 of 2019, W.P. (C) No.1071 of 2019, W.P. (C) No.1072 of 2019, W.P. (C) No.1260 of 2019, W.P. (C) No.1215 of 2019, 1238 of 2019, W.P. (C) No.1280 of 2019, W.P. (C) No.1281 of 2019, W.P. (C) No.1283 of 2019, W.P. (C) No.1284 of 2019, and W.P. (C) No.1099 of 2019.

11. In background of such facts, learned counsel, Mr. Somik Deb led the arguments on behalf of the petitioners. Inviting my attention to the decision of this Court in case of ***Tanmoy Nath (supra)*** and in particular, the quoted portion of the said judgment he submitted that this Court did not hold that the selection process pursuant to which the petitioners were previously appointed was *ab initio void*. The Court merely held that in absence of proper guidelines, the selections were irregular. When the petitioners, who were subsequently subjected to fresh selection process and after clearing such selection process were duly appointed, such appointment must relate back to their initial engagement. He argued that this Court was also conscious of such possibilities and had therefore, specifically in paragraph-125

provided that in case of those teachers, who get duly selected afresh their past service would be preserved for the purpose of pension, seniority and all other benefits. The Government, therefore, committed a serious error in denying such benefits to the petitioners by placing the petitioners in fixed salary. The respondents completely wiped out their past service of several years. Counsel submitted that the Supreme Court had extended the time limit for completing the fresh selection process. The petitioners were recruited within such extended time. Delay if at all, was attributable to the State Government. The directions contained in paragraph-125 of the judgment in case of ***Tanmoy Nath (supra)*** therefore, would apply with full force. The Government cannot take shelter of delay in appointment of the petitioners to deny such benefits.

12. With respect to Category-I, learned counsel drew my attention to an order of Division Bench of this Court in case of ***Sri Babul Debnath and others vs. The State of Tripura and others [W.P. (C) No.435/2018]*** dated 21.01.2019 in which similar issue had come up for consideration. The High Court had allowed the petition and protected the past service of the petitioners.

13. With respect to Category-II, counsel submitted that since initial appointments of the petitioners were not illegal but merely irregular, upon their ultimate selection, their past service would be regularized. In other words, their fresh appointments would relate

back to the initial date of engagement. In this context, counsel relied on following decisions:

(i) ***Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others, (1990) 2 SCC 715***;

(ii) ***State of W.B. and others vs. Aghore Nath Dey and others, (1993) 3 SCC 371***;

(iii) ***L. Chandrakishore Singh vs. State of Manipur and others, (1999) 8 SCC 287***.

Counsel also relied on Fundamental Rule 22(I)(a)(1). In order to contend that since the petitioners are selected and appointed on the posts higher than those which they were previously holding, their pay fixations need to be done on the basis of the principles laid down in the said Rule after protecting their past service as provided by this Court in the judgment in case of ***Tanmoy Nath (supra)***. Counsel also relied on F.R.27, which provides that subject to any general special orders an authority may grant a premature increment to a Government servant on a time-scale of pay, if it has power to create a post in the same cadre on the same scale of pay. He submitted that the said Rule can also be utilized for the purpose of the petitioners' pay fixation upon appointment on the higher post.

14. With respect to Category-III, counsel submitted that in the said case also the Government cannot wipe out the entire past service of several years put in by the petitioners since they had subjected themselves to the fresh selection process during which

they were found meritorious and therefore, appointed. The action of the Government therefore to place these petitioners on fixed salary basis was wholly impermissible. The directions contained in paragraph-125 of the judgment in case of ***Tanmoy Nath (supra)*** needs to be applied with suitable modifications. This Court while rendering the said judgment could not have foreseen in all eventualities. It would therefore be necessary to suitably interpret such directions and apply the same with necessary adaptations required to meet with the current situation.

15. I have heard remaining learned Advocates also appearing for the petitioners. In particular, learned counsel, Mr. Arijit Bhowmik drew my attention to the documents on record in W.P. (C) No.1215 of 2019. It is a case falling in Category-III namely, where the petitioners have been appointed to a post lower than which they were previously holding. They had previously approached this Court for the protection of the past service by filing W.P. (C) No.436 of 2018. Division Bench of this Court by an order dated 25.02.2019 permitted the petitioners to make a representation to the authorities. In response to the representation so made the Government passed order dated 03.09.2019 in which limited benefit of counting the past service for leave at credit, GPF Account and pension have been granted but not for the purpose of pay protection and seniority.

16. On the other hand, Mr. Debalay Bhattacharjee, learned Government Advocate appeared for the respondents. He

submitted that the decision of this Court in case of ***Babul Debnath (supra)*** would be applicable in those cases where a teacher has been appointed on the same post as the previous one and that such appointment was made prior to 31.12.2017. He argued that by the order dated 14.12.2017, the Supreme Court provided that the tenure of the incumbent teachers will come to an end on 31.12.2017 and thereafter, their appointment will only be for six months on ad-hoc basis on such fresh terms as the State Government may impose. With respect to those teachers, who are therefore appointed after the said date of 31.12.2017, they cannot claim the benefit of protection of past service even though they may have been appointed on the same post for which they were previously engaged.

17. With respect to Category-II, he submitted that such a situation would not be covered by the directions contained in para-125 of the judgment of this Court in case of ***Tanmoy Nath (supra)***. In any case, such appointees cannot carry the seniority of the past service in the new cadre and upset the seniority of regular teachers appointed in the cadre much earlier.

18. In addition to these arguments, with respect to Category-III, he contended that in any case, those teachers, who are appointed to lower posts than those which they were holding previously, protection of past service, in any case, was never envisaged by this Court in case of ***Tanmoy Nath (supra)***.

19. Counsel lastly contended that the petitioners had tendered resignations from their past services before joining the posts on fresh appointments. Such resignation would in any case, wipe out the past service as per the settled law. None of the petitioners can claim any benefit of protection of past service.

20. In support of his contentions, counsel relied on the following decisions:

(i) In case of ***Comptroller & Auditor General of India and others vs. Farid Sattar***, reported in ***(2000) 4 SCC 13*** in which on a request transfer outside the cadre the employee was appointed on certain conditions including that on transfer he would be appointed in a lower post as a direct recruitment with bottom seniority and he would forgo the benefit of passing any departmental examination in the higher post. It was on such background that the Supreme Court held that the employee had to forgo the benefit of having passed the previous examinations.

(ii) In case of ***Union of India and others vs. Deo Narain and others***, reported in ***(2008) 10 SCC 84***, in which the employee had sought transfer outside the zone of transferability on compassionate ground. Such transfer was granted on the condition that he will not be entitled to get the service rendered in the former collectorate to be counted for the purpose of seniority and he would be placed at the bottom of the list of employees in the transferred collectorate. It was in this background that the Supreme Court made a distinction between such transferee being placed at the bottom of seniority in new collectorate and thereby,

surrendering his seniority against counting past service for the purpose of considering his eligibility for promotion.

21. Before addressing the issues category wise, first I may dispose of the peripheral objections of the respondents to any past service of any of the petitioners being protected by virtue of the judgment of this Court in case of ***Tanmoy Nath (supra)***. These objections are that (i) for those of the petitioners, who are appointed after 31.12.2017, no such protection can be granted and (ii) the petitioners having tendered resignation, their past service would be forfeited.

22. We have noted the entire background of these cases from the initial point of the decision of this Court in case of ***Tanmoy Nath (supra)***. This Court while setting aside all the appointments including those of the petitioners, in the interest of school children provided that such teachers would continue to function on their posts till 31.12.2014. It is also provided in paragraph-123 that on or before 31.12.2014 the State must complete a fresh process of selection of teachers in all categories after framing a new employment policy. The State Government had challenged the said decision before the Supreme Court and by an order dated 04.08.2014 directions contained in paragraph-123 of the judgment were stayed. The directions for undertaking fresh selection process was thus, suspended. Consequently, all the teachers' including the present petitioners' services were continued in the same manner as before. It was only on 29.03.2017 that the Supreme Court while dismissing the appeal of

the Government issued certain directions modifying those given by the High Court in paragraph-123 of the judgment. Time for framing fresh employment policy and for completion of selection process was extended. As per fresh guidelines therefore, such selection would be completed on or before 31.12.2017. It was also provided that "*till the fresh process is completed, the teachers already appointed shall continue*". In a subsequent order dated 14.12.2017 while extending the time for completing the selection process till 30th of June, 2018, it was further provided that "on 31st December, 2017, the tenure of the incumbents will come to an end. Thereafter, their appointment will only for six months on ad-hoc basis on such fresh terms as the State Government may impose.

Thereafter, none of the said incumbents will continue." There were further extensions and last extension, as noted for completing the selection process is granted up to 31.03.2020.

23. This cut off line drawn by the Government of appointment prior to 31.12.2017 for the purpose of protection of past service is wholly impermissible. Firstly, the directions contained in paragraph-125 of the judgment in case of ***Tanmoy Nath (supra)*** would continue to hold the field with suitable modifications of time lines provided by the Supreme Court in subsequent orders. Secondly, the purport of the Supreme Court directing that post 31.12.2017 the engagement of the teachers would be on ad-hoc basis was to put a greater sense of urgency on the State administration to complete the selection process within the time

permitted. If the State Government itself faltered and failed to complete such process, surely the petitioners and other teachers similarly situated, cannot be penalized by wiping out their entire past service. The fact that the petitioners continued in service right from inception in the year 2010 till the regular selection and appointments in the year 2017/2018 is not in dispute. There is nothing on the record which would permit the Government to withhold the benefits of the directions contained in para-125 of the judgment in case of ***Tanmoy Nath (supra)*** if otherwise available, solely on the basis that some of these teachers were appointed after 31.12.2017. The first preliminary objection of the Government therefore must be rejected.

24. The second objection of the resignation by the respective teachers is possible of a summary dispatch. Firstly, all the petitioners had applied as per the requirement of the decision in case of ***Tanmoy Nath (supra)*** with age relaxation and with prior permission of the employer. Secondly, the resignations were tendered by the teachers upon being offered a fresh appointment pursuant to their regular selection. All these resignations were technical resignations. In plain terms without such resignations being tendered and accepted the petitioners could not have accepted the offer of fresh appointments. This Court in case of ***Tanmoy Nath (supra)*** never made any such distinction that a teacher who resigns from service to join fresh appointment on regular basis will not be entitled to the protection of the past service. Any such view would defeat the very purpose of issuing

directions contained in paragraph 125 of the judgment. In any case, it is difficult to understand this objection of the Government. If not by tendering technical resignation, in which other mode the concerned employees could have brought about the termination of the relationship of employer employee to enable them to accept fresh offer of appointment is not explained anywhere. This is not a simple case of a Government servant resigning from his post out of his free will and thereby permanently terminating the employer employee relationship pursuant to which as per the relevant Rules and settled legal position, his past service would be forfeited. Does the Government Advocate suggest that in order to preserve past service the concerned teachers had to join new service without resigning from past engagement? Surely not. Interestingly, as pointed out by the counsel for the petitioners in W.P. (C) No.1215 of 2019 while considering the representations of the petitioners, Government itself has granted limited benefit of protecting the past service for the purpose of leave credit, provident fund, pension and gratuity. If the principle of forfeiting the past service upon resignation is accepted, even these benefits particularly, counting the service for the pensionery benefits could not have been granted.

25. With this background, we may address the issues category wise. With respect to Category-I, after clearing the two plenary objections of the Government noted and discussed above, there remains no point of distinction between the cases of these petitioners and those decided by this Court in case of ***Babul***

***Debnath (supra)***. In the said case, when the Government had denied the benefit of protection of past service upon the teachers being regularly selected and appointed on the same post, the High Court issued following directions:-

> 5. It is not in dispute that insofar as para 125 reproduced (supra), with emphasis is concerned, has attained finality.
>
> The State is bound to comply with the same.
>
> To our reading, if any one of the already selected candidates are again selected in terms of the fresh selection process, then their earlier services so rendered by them has to be counted for the benefit of seniority, pension and all other purposes.
>
> 6. Before us, it is not in dispute that the present writ petitioners, pursuant to the directions issued by this Court reproduced(supra) had participated in the fresh selection process so undertaken by the Government. It is also not in dispute that they stand selected, in accordance with law. Also letters of appointment stand issued, which they accepted and the petitioners posted with their joining at the appropriate places of posting. Their selection and appointment is to the very same post to which they earlier stood selected and appointed.
>
> 7. It is the petitioners' grievance that notwithstanding the directions issued by this Court, unambiguous in nature, the State Government, in utter disregard, rather in contempt, have issued fresh letters of appointment, completely ignoring the past services so rendered by them and treating their service as a fresh from the date of their selection so undertaken pursuant to and in terms of fresh selection process.

> 8. Well, to our mind, this exercise undertaken by the Government is not in the spirit, rather in utter disregard of the directions issued by this Court. The directions as we have already expressed are unambiguously clear. Past service rendered by a candidate, who was selected and had discharged his/her duties had to be counted for the purposes of seniority, pension and all other benefits. Candidates stood selected to the very same post.
>
> 9. As such, in our considered view, the writ petition needs to be allowed with a direction to the State to treat the past service of each one of the petitioner(s), so rendered in relation to the earlier selection process, for the purposes of seniority, pension and all other benefits. All consequential action shall positively be undertaken by the State within a period of 3(three) months. Equally, monetary benefits, if any, shall be disbursed within the aforesaid period.
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> 10. In view of the aforesaid observations, the present petition stands disposed of, reserving liberty to the writ petitioners to seek further direction(s), if so required, by way of separate application in these proceedings. Pending application(s), if any, also stand disposed of accordingly."

26. In cases falling in Category-I therefore, there shall be full protection of their past service as envisaged in para-125 of the judgment in case of ***Tanmoy Nath (supra)***.

27. Coming to the cases falling in Category-II where the teachers have been selected and appointed on the higher posts, their cases must be considered in light of the observations made

in para-125 of the judgment in case of ***Tanmoy Nath (supra)***. The said paragraph is pivotal to the entire discussion. Nevertheless, certain developments have taken place after rendering of the said judgment and suitable modifications shall have to be made to suit the purpose. In other words this discussion must revolve around the directions contained in para 125 of the decision in case of ***Tanmoy Nath (supra)*** but cannot be confined to it completely. Right of the petitioners flow from the said judgment but the directions contained therein will have to be applied with suitable modifications as per the requirements of the case. Significant developments are that the proceedings remained pending before the Supreme Court and thereafter lingered before the Government. In the meantime, limited selections were made and appointments offered. The foundational purpose of issuing the clarification direction in para-125 of the judgment was to ensure that those teachers, who offer themselves for fresh selection which would be undertaken on the basis of sound employment policy which may be framed and after competitive examination are selected and appointed, in their cases there must be a protection of past service already rendered. The Division Bench while striking down the entire selection process was of course actuated by certain irregularities committed in such selection process and in particular, offended by the fact that the selection policy was totally un-guided. However, that would not per say imply that every selected and appointed candidate was undeserving or incompetent. Therefore for such candidate who gets selected and

appointed in the fresh selection process, the desire of the Court was to protect his past service for all purposes.

28. While doing so, the Court obviously would not be in a position to foresee all eventualities which may arise in future and provide for all possible combinations which may develop. Category-II is of cases where the teachers, who were previously holding particular post have proved their merit by securing selection on the higher posts. The philosophy and logic for protection past service contained in the judgment in case of ***Tanmoy Nath (supra)*** would therefore apply in their cases also, however, with a rider, namely, that their service for the purpose of seniority upon their fresh appointments cannot be protected. Any such direction would be wholly unjust to those teachers, who may be holding the post on regular basis long before these teachers were appointed on regular basis pursuant to fresh selection process. Surely, by no judicial dictum these teachers can jump in seniority over those who are already existing in the cadre since long. Subject to this restriction, the petitioners in Category-II must get the protection of their past service. This would also be in consonance with the clarification contained in para-125 of the judgment in case of ***Tanmoy Nath (supra)***.

29. Coming to Category-III, the teachers who were previously holding a post but are now selected and appointed on the lower post, for obvious the reasons cannot claim seniority benefit or any other benefit of past service except for the limited purpose of

leave to their credit, provident fund, pension and gratuity which the Government has already recognized and granted as also for being posted in the regular scale. These teachers had rendered more than 5 years of service since the year 2010 and therefore, had been brought on the regular pay scale in the year 2015 and thereabouts. They now cannot be placed back on fixed salary basis. Firstly, this would be going against the philosophy of counting past service of those teachers, who eventually get regular selection and appointment. Secondly, it would also be incongruent with the decision of the Government to count their past service for the purpose of pension and gratuity. If their past service is counted towards pensionery benefits, it would defy logic that the same should not be counted as a qualifying service for the purpose of being brought over to regular pay scale.

30. Under the circumstances, petitions are disposed of with following directions:

(i) In case of Category-I cases, the petitioners shall receive full benefit of the past service for the purpose of seniority, pension and all other purposes.

(ii) In Category-II cases, past service rendered by the petitioners will be counted for the purpose of pension, pay fixation and all other purposes except for seniority. In other words, it is provided that the pay of these petitioners would be fixed in their respective posts pursuant to fresh appointments taking into account entire past service rendered by them and bearing in mind the principles contained in F.R.22 of the Fundamental Rules. However, their past

service shall not count towards seniority. They would be placed at the bottom of seniority as on the date of their fresh appointments. It is clarified that these directions shall not enable any other teachers in the same cadre or any other cadre to claim up-gradation of his/her pay by seeking removal of anomaly or in any other manner.

(iii) In Category-III cases, the petitioners' past service would be counted for the limited purpose of retaining their leave credit, provident fund, pension and gratuity and further that they will be placed in the regular scale of pay from the date of their fresh appointment and the pay will be fixed at the minimum of the scale. They would receive all admissible allowances.

31. This entire exercise of re-fixation of the pay of the petitioners shall be completed within a period of 3 (three) months from today. Available monetary benefits be released within a period of 2 (two) months thereafter.

32. All petitions are disposed of accordingly.

**(AKIL KURESHI), CJ**

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