

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) No.290/2020**

Smt. Aparna Chowdhury Reang, D/O - Sri. Satrunjoy Prasad Chowdhury,  
Resident of-Village + P.O-Fulkumari No-2, P.S - R.K Pur, District - Gomati,  
Pin - 799113.

----Petitioner(s)

Versus

1. The State of Tripura, (To be represented by the Principal Secretary, Department of Secondary Education, Government of Tripura), New Secretariat Building, New Capital Complex, Kunjaban, PS- New Capital Complex, Agartala, West Tripura, PIN 799010.
2. The Director, O/O the Directorate of Secondary Education, Govt. of Tripura, Office Lane, Agartala, West Tripura, Agartala, Pin-799003.
3. The Director, O/O the Directorate of School Education, Govt. of Tripura, Office lane, Agartala, West Tripura, Agartala, Pin-799003.
4. The Secretary, Department of Finance, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S - New Capital Complex, Agartala, West Tripura, PIN- 799010.
5. Ishanchandranagar Pargana H/S School, To be represented by it's Secretary cum School Managing Committee, P.O- Ishanchandranagar, Dist- West Tripura, Dukli Block, Sadar Sub Division, West Tripura, PIN – 799003.
6. The Secretary, School Managing Committee, Ishanchandranagar Pargana H/S School, PO- Ishanchandranagar, Dist - West Tripura, Dukli Block, Sadar Sub Division, West Tripura, PIN-799003.

-----Respondent(s)

**Along with**

**WP(C) No.333/2019**

Smt. Suparna Deb Roy, W/O - Sri. Partha Sarathi Ghosh, R/o - Kadamtali,  
Krishnanagar, P.O.-Agartala, P.S.- West Agartala, District-West Tripura.

----Petitioner(s)

Versus

1. The State of Tripura, represented by its Principal Secretary, School Education Department, Government of Tripura, P.O.-Kunjaban, P.S.-New Capital Complex, District-West Tripura.
  2. The Director, Directorate of Secondary Education, Govt. of Tripura, P.O.-Agartala, P.S.-West Agartala, District-West Tripura.
  3. Udaipur Ramesh H.S. School, Represented by the Secretary, Managing Committee, P.O.-R.K. Pur, P/S- R.K. Pur, District - West Tripura.
  4. Teachers Recruitment Board (Tripura), Represented by its Member Secretary, Govt. of Tripura, P/O- Agartala, P/S- West Tripura, Dist.: West Tripura.
  5. The Secretary-cum-Commissioner, Finance Department, Govt. of Tripura, P/O-Kunjaban, P/S -New Capital Complex, Dist. - West Tripura.
- Respondent(s)

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For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,  
Mr. Arijit Bhowmik, Advocate,  
Mr. Samarjit Bhattacharjee, Advocate,  
Mr. Ankan Tilak Paul, Advocate.

For Respondent(s) : Mr. Dipankar Sharma, Addl. G.A.

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

Date of hearing and judgment : **18<sup>th</sup> March, 2021.**

Whether fit for reporting : **NO.**

**JUDGMENT & ORDER (ORAL)**

*(Akil Kureshi, C.J.)*

These petitions involve similar questions. Brief facts are as under:

2. Smt. Aparna Chowdhury Reang, petitioner of WP(C) No.290 of 2020 holds the qualification of graduation from Tripura University and Masters Degree from IGNOU. She was appointed as Assistant Teacher in a private aided school in the higher secondary section for a fixed monthly salary of Rs.2,730/-. Her service conditions would be governed by grant-in-aid code. Her appointment was approved by the Director of School Education, Government of Tripura on 10.09.2004 and petitioner joined the duty on 04.11.2004. Upon completion of 5 years, w.e.f. 04.09.2009 she was also brought over to regular pay scales. After 10 years of service she was granted benefit of First Assured Career Advancement (ACP) in terms of the Revision of Pay Rules, 2009.

3. The Government of Tripura invited applications for the post of Graduate and Postgraduate teachers in Government schools on 27.05.2017. The petitioner applied in response to the said advertisement after obtaining no objection from her employer. She was selected and offered appointment to the post of Postgraduate teacher in English in a Government school on a fixed monthly pay of Rs.22,785/- under office memorandum dated 30.06.2018. The petitioner accepted such appointment and after rendering her resignation which was accepted by the employer, the petitioner joined the duty on 05.02.2019. Her grievance is that in her new assignment as a

Government teacher her pay has been downgraded. She would point out that as a teacher in grant-in-aid school, she was placed in the regular pay scale prescribed for a postgraduate teacher whereas in her new assignment as a Government teacher she has been granted salary on fixed pay basis which is much lower than her previous pay. She has, therefore, filed this petition praying that her past service in grant-in-aid school be counted for the purpose of her pay fixation as a Government teacher. In other words, she expects that instead of asking her to work on fixed pay structure for initial period of 5 years, she may be placed in the time scale of pay from inception.

4. Petitioner of WP(C) No.333 of 2019 Smt. Suparna Deb Roy was appointed as a Postgraduate teacher in private but Government aided school in September, 2011. Her initial appointment was on fixed pay basis. Upon completion of 5 years w.e.f. 23.09.2016 she was granted regular scale of pay. She also applied in response to the Government advertisement dated 27.05.2017 for the post of Postgraduate teacher after obtaining no objection from her employer. She was selected an offer of appointment as a Postgraduate teacher (Philosophy) under an order dated 20.10.2017. After tendering resignation which was accepted by the employer, she joined duty on 27.12.2017. She has also been placed in fixed salary regime. She would have to wait for 5 years before she was brought over to regular scales.

5. Learned advocates for the petitioners strenuously urged that both the petitioners were placed in proper pay scales prescribed by the Government for teachers. They were teachers in grant-in-aid schools where the grant of salary to the teaching staff would come from the Government funds. Such teachers are paid at the same rate as Government teachers. Their service conditions are governed by grant-in-aid code of the State of Tripura which envisages proper selection and appointment of teachers as well as their tenure protection. Their engagements were thus akin to Government service. They had applied for selection with prior no objection from their employers and joined the duties after tendering “technical” resignations. The counsel relied on F.R. 22 and Rule 26(2) of CCS (Pension) Rules in support of their contentions. They also placed heavy reliance on a decision in case of *Tarendra Reang & others vrs. The State of Tripura & others* in WP(C) No.234 of 2020 and connected petitions decided by the Single Judge by a judgment dated 06.01.2021.

6. On the other hand, learned Addl. Government Advocate Mr. Dipankar Sharma opposed the petitions contending that the petitioners had applied in response to the advertisement which clearly specified that the appointee would be expected to discharge duties for 5 years on fixed salary basis before he/she would be brought over to regular scale. The petitioners

accepted appointments with this clear stipulation in mind. Further they were working in private schools. Merely because the schools received grant-in-aid from the Government would not mean that the petitioners were Government servants. F.R. 22, Rule 26(2) of the CCS(Pension) Rules and the instructions relied upon by the petitioners would apply only in case a Government servant from one department tenders technical resignation and joins another Government department which is not the situation in the present case. He also argued that the facts in case of *Tarendra Reang* (supra) were vitally different.

7. Under a notification dated 31.05.2005 Government of Tripura formulated the Tripura Grant-in-aid (Government aided Schools) Rules, 2005 (*hereinafter to be referred to as Grant-in-aid Rules*). Administrator has been defined under Rule 2(a) of the Grant-in-aid Rules as an officer duly appointed as an administrator by the Director of School Education. Chapter-II contains Rule 3 which pertains to terms and conditions for having Grant-in-aid and its status. Existing schools would be covered by the grant-in-aid code as per the guidelines issued by the Government from time to time. Rule 4 contained in Chapter-II pertains to eligibility for payment of grant-in-aid. Rule 5 pertains to functioning of Managing Committees. Sub-clause (iii) of Rule 5 provides that appointment to all categories of posts both by direct

recruitment and promotion shall be made strictly following all provisions of the Recruitment Rules finalized by the Education (School) Department for these categories of posts in Government schools. As per clause (v) of Rule 5 the age of retirement for all teaching and non-teaching staff in such privately managed grant-in-aid schools will be same as applicable to Government schools. Rule 7 pertains to facilities to be provided to the Government aided schools. As per sub-clause (i) of clause (a) of this Rule, once a school is given status of grant-in-aid, 100% pay and allowances to the approved teaching and non-teaching staff will be borne by the Government.

8. Chapter-III contains only one Rule 9 which pertains to disciplinary matters and provides for detailed procedure for suspension of the teaching and non-teaching staff of the grant-in-aid school, the penalty that can be imposed on such staff and the manner of imposing such penalties. Chapter-IV pertains to miscellaneous matters. Rule 10 contained in the said chapter pertains to withdrawal of grant if in the opinion of the Director of School Education the school is not fulfilling any other terms and conditions of the grant or is found to be violating valid instructions of the Government.

9. The basic philosophy behind formulation of the grant-in-aid scheme is that though the Government has a duty to provide education in

primary and secondary level, it may not be possible to cover the entire eligible population for admitting students in Government schools. Instead of setting up such Government schools, the Government would aid private schools and undertake the responsibility of salary and other administrative expenditure for running such a school. In turn, the school would have to adhere to certain Government policies and guidelines. The teaching and non-teaching staff would have tenure protection against arbitrary terminations. Nevertheless, an employee of a grant-in-aid school is not in Government employment. Such grant-in-aid can be withdrawn after following the procedure under several circumstances such as, the school being mismanaged or not following the directives of the Government. Such situation can also be envisaged where a grant-in-aid school may be shut down if it is found that the management is unable to sustain the school for insufficient number of students studying in the school.

10. The crux of the issue is that the staff of a grant-in-aid school is certainly not in Government employment. A teacher of a grant-in-aid school may have his pay protection as long as he continues in such employment and the school continues to receive grant-in-aid. The teacher may have tenure protection in terms of Rule 9 of Grant-in-aid Rules, however, he is not a Government servant.

11. The request of the petitioners for protection of past service, therefore, must be viewed on this basis. Clause (a) of F.R. 22(I) would cover a case where a Government servant holding a post, other than a tenure post in substantive temporary officiating capacity is promoted or appointed in a substantive temporary officiating capacity. In such a situation, he would have certain pay protection. Clearly this clause applies to a Government servant when he is promoted or appointed on another Government post. Likewise, Rule 26 of the CCS (Pension) Rules pertains to forfeiture of service on resignation. Sub-rule (1) of Rule 26 as is well-known, envisages forfeiture of past service upon a Government servant resigning. Sub-rule (2) of Rule 26 which is in the nature of an exception to sub-rule (1) provides that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission another appointment whether temporary or permanent under the Government where such service qualifies. Rule 26 itself is applicable to a Government servant and sub-rule (2) of Rule 26 would, therefore, cover a case of a Government servant who resigns from one Government post for taking up another Government position with a proper permission of the employer. The Government of India instructions in this respect clarifying this position also, therefore, would not carry the case of the petitioners any further.

12. In case of *Tarendra Reang* (supra) all the petitioners were working on different posts under the State Government. They had applied for appointment to the post of graduate/postgraduate teachers in Government schools. Upon selection they had tendered technical resignations and taken up new assignments. When they were once again asked to serve on fixed salary basis for 5 years, this Court held that the same would not be permissible. It was in this context that the Court had relied on F.R. 22 and Rule 26(2) of the CCS (Pension) Rules and allowed the petitions by making following observations:

“[14] Under this memorandum, even upon a Government servant joining a new post in the Government or autonomous organization set up by the Government his past service for the purpose of being governed by the old pension scheme will be granted, provided his join in the new service after tendering technical resignation. Thus, even the Government of Tripura recognises this concept of the past service being protected when an employee tenders technical resignation and joins new post under the Government. Even otherwise, this is an implication of sub-rule (2) of Rule 26 of CCS(Pension) Rules which have been adopted by the State Government.

[15] From the above discussion it can be seen that interdepartmental migration of the employees is not discouraged, be it the Government of India or the State

Government. Specifically Rule 26(2) of CCS(Pension) Rules protects the past service of an employee of the Government even after his technical resignation and joining new post. Though this is limited for the purpose of pensionary benefits of an employee, it is impossible to protect the pension without protecting his pay.

[16] The incongruity of the situation that may be brought about if the Government's stand is accepted would be that full time Government servants who have after rendering service for 5 years on fixed salary basis are brought over to regular scale, once again would be placed at the bottom of salary structure and would be asked to render service for 5 years on fixed salary which is a meagre 65 or 75% of entry scale of the equivalent post without benefit of any other allowances. By protecting their past service for the purpose of pay and allowances even the Government purpose of cost cutting would not be frustrated because these employees would be vacating their regular posts which when filled up the Government will be offered on fixed salary basis. Thus this interdepartmental migration would only bring about change of the head from which the petitioners would be drawing their salaries and there would be no additional outflow from the Government exchequer.

[17] The objection of the Government that the petitioners accepted their appointments with full knowledge and, therefore, they are estopped from raising their grievances is possible of the summary disposal. Neither the recruitment rules nor the advertisement nor the offer of appointment

can override the service rules, regulations and statutory provisions. Even if the advertisement provided that an appointee shall be placed under fixed pay for a period of 5 years, never clarified that even if the rules and regulations so provide, the past service of a job aspirant who has been a Government servant already for over 5 years would be wiped out, nor could it have been so prescribed.

[18] Under the circumstances, all the petitions are allowed. In cases where the petitioners were already enjoying pay fixations in regular scales, their entire past service shall be protected for the purpose of pay and allowances including leave encashment and post-retiral benefits as per their appointments in new posts. Where the petitioners have not been granted regular pay scales even after completion of 5 years of service, they would be first brought over to regular pay scale from due dates. Upon their fresh engagements as Teachers, their past service similarly shall be protected. It is, however, clarified that none of the petitioners would have any claim of seniority in their new engagements because in the new organization they cannot carry the seniority of the past service so as to jump over the other existing employees in the cadre.

Entire exercises of pay fixation and payment of arrears shall be completed within 6(six) months from today. Petition disposed of accordingly. Pending application(s), if any, also stands disposed of.”

13. Facts in case of *Tarendra Reang* (supra) thus are vitally different. All the petitioners in the said case, as noted, were holding different Government posts on substantive basis. It was, therefore, that when they joined service as Government school teachers, therefore, protected their past service for the purpose of pay fixation and other benefits except seniority in the new cadre.

14. In the result, petitions are dismissed.

15. In case of WP(C) No.333 of 2019 the petitioner fleetingly challenged the very scheme of the Government placing a new incumbent in Group-C and D post in fixed salary basis for 5 years before bringing over to regular scales. However, this is a much wider issue and no serious arguments were advanced on behalf of the petitioner and I have kept this question open if it arises at a future date.

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

**(AKIL KURESHI), CJ**

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