

HIGH COURT OF TRIPURA
AGARTALA

WA No.171/2021

For Appellant(s) : Mr. D Bhattacharya, Govt. Advocate,
Mr. Partha Saha, Advocate,
Mr. S Saha, Advocate.
For Respondent(s) : Mr. Somik Deb, Sr. Advocate,
Mrs. P Dhar, Advocate,
Ms. S Chisim, Advocate.

HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE JUSTICE MR. S G CHATTOPADHYAY

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21/12/2021

(Indrajit Mahanty, CJ).

Challenge in the present writ appeal has been made by the State of Tripura to a judgment & order dated 9th March 2021 disposing of WP(C) 1741/2017 filed by the High Court Employees' Association and Ors. whereby the learned Single Judge had directed as follows :

“15. It is further admitted position that in view of the judgment passed in WP(C) 71 of 2015, the State-respondents have extended the benefit of one advance increment to the employees of the High Court after considering the fact that the staffs of this High Court are similarly situated to those of the employees of the subordinate judiciary. Since, it is already decided that the employees of the High Court are similarly situated to those of the employees of the subordinate judiciary, I do not find any reason to deny the employees of this High Court from their legitimate entitlement of the benefit of revised pay structure as recommended by the 6th Central Pay

Commission w.e.f. 01.01.2006 and other allowances in terms of the order dated 16.12.2017. The members of the petitioner association deserve similar treatment as those of the staff of subordinate judiciary since both the employees of subordinate judiciary and the High Court are similarly situated having similar and identical duties and responsibilities. Since it is established that the High Court employees are at par with the employees of subordinate judiciary, they are entitled to the arrears of pay under Revised Pay structure from the date the same was provided and in tune with the staff of subordinate judiciary and other ancillary benefits like allowances, etc. as well, in terms of the order dated 16.12.2017 and subsequent amendments thereof, if any. Accordingly, it is ordered.

16. The State-respondents are further directed to extend the benefits of 6th Central Pay Commission to the employees of the High Court of Tripura as provided to the employees of subordinate judiciary under the order dated 16.12.2017 invoking the doctrine of 'equal pay for equal work'.

17. It is made clear that Mr. Somik Deb, learned Senior Counsel on behalf of the petitioners has given an undertaking that if the present order passed by this Court is quashed or set aside by the superior Court, then, the employees of the High Court shall make refund of the entire amount so received by them to the State government. Further, considering the financial constraints, the State-government has been suffering as submitted by learned G.A., this Court allows the State-respondents to implement the directions recorded in this judgment, after 6(six) months, but, within 8(eight) months from the date of receipt of the copy of this order."

Appeal has been filed by the State *inter alia* contending that the said judgment & order impugned herein is in violation of the High Court of

Tripura Services(Appointment, Conditions of Service & Conduct) Rules, 2014 and in particular Rule 16 thereof.

Admit.

As an interim measure, we are of the considered view that the issue i.e. 6th Central Pay Commission recommendations made for the employees of the subordinate Courts and implemented by the State through decisions made by the Council of Ministers can be and should be extended to the employees of the High Court of Tripura.

It is submitted by the learned counsel for the employees' association that this issue is no longer *res integra*. In this respect, it appears that WP(C) 71/2015 had been moved by the employees of the High Court before the learned Single Judge of this Court praying for parity of salary structure with that of the employees of subordinate judiciary who were recipients of the benefit of 6th Pay Commission. Since a different situation arose on account of the implementation of the 6th Pay Commission where employees of the subordinate judiciary started receiving of higher salary and benefits than the employees of the High Court of Tripura, this case was concluded in favour of the employees association. However, Hon'ble Single Judge while holding that the High Court employees are entitled to claim their pay parity with the subordinate Courts reached a finding that the

work done by the employees of the High Court are much more and/or at the very least, at par with that of employees of the subordinate Courts and directed payment in terms of the 6th Pay Commission, however, directed actual payment on and from 1st April 2003 and directed notional computation from retrospective date till 31st December 2014.

It appears that the employees association preferred a writ appeal (WA 12/2017) which came to be disposed of vide order dated 8th March 2017 allowing the writ appeal and granting the relief sought for by the employees association to the effect that they would be entitled to get payment of their salaries in terms of the 6th Pay Commission w.e.f. 1st April 2003. Thereafter the State preferred a Special Leave Petition (Civil) Diary No(s).39927/2017 and the said SLP came to be dismissed vide order dated 9th February 2018. It appears that after dismissal of the SLP before the Hon'ble Supreme Court a review application came to be filed before the Division Bench and the same also came to be dismissed. These facts have been narrated by the learned counsel for the respondent-association to support his submission that the issue regarding entitlement of parity of employees of the High Court with those of the subordinate Courts has become settled.

It is further submitted by the respondent-association that the aforesaid judgments were relied upon and cited by the Hon'ble Single Judge in the order impugned and the directions issued therein were in consonance with the directions issued by the Hon'ble Single Judge as well as the Division Bench in the concerned writ appeal. Therefore, the State ought not to be permitted to raise a fresh challenge to the issue that is once settled.

It is also brought to our notice by the learned Government Advocate that the entitlement of the benefit of 6th Pay Commission is still under challenge before the Hon'ble Supreme Court in Civil Appeal No.9198-9199/2018. What is important to note herein that even though the SLP has been admitted and pending final adjudications before the Hon'ble Supreme Court yet the State continues to pay the subordinate court employees the benefits of salary and other perks as per recommendation of 6th Pay Commission based upon an undertaking submitted by the said employees that they would abide by the outcome and result of the Hon'ble Supreme Court and further that in the event Hon'ble the Supreme Court reverses the judgment of the Hon'ble Tripura High Court, they have undertaken to refund the salaries and allowances released on the basis of the 6th Pay Commission.

The learned counsel appearing for the High Court Employees Association was also called upon to provide an undertaking similar to the one submitted by the employees of the subordinate Court and as a sample, a supplementary affidavit has come to be filed containing an undertaking of one Sri Biplab Chakraborty who is working in the post of Head Clerk in the Hon'ble High Court of Tripura.

We are of the considered view that the undertakings, as provided by Sri Biplab Chakraborty at Annexure - A, are submitted before the Registrar (Administration) by the employees of the Tripura High Court Employees Association. On submission of the said undertakings the said employees shall be entitled to get the benefit of 6th Pay Commission and other ancillary benefits like allowances etc. w.e.f 1st January 2006 along with outstanding dues, if any. The Hon'ble Single Judge has allowed the State-respondents to implement the directions recorded in the said judgment after 6(six) months, but, within 8(eight) months from the date of receipt of the copy of this order. In the meantime, more than 8(eight) months have elapsed. Consequently, we direct implementation of these directions by the State in 3(three) monthly instalments including the arrears starting from the end of January, February and March 2022.

Matter shall be listed again on *11th April, 2022* and in the meantime, if there is any final adjudication of the matter by the Hon'ble Supreme Court, parties are at liberty to bring the same to the notice of this Court with a prayer for early listing.

(S G CHATTOPADHYAY, J) (INDRAJIT MAHANTY, CJ)



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