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**(2011) 05 GAU CK 0038**

**Gauhati High Court (Agartala Bench)**

**Case No:** Writ Petition (C) No. 278 of 2001

Sri Kanu Ranjan Paul

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

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**Date of Decision:** May 10, 2011

**Hon'ble Judges:** Utpalendu Bikas Saha, J

**Bench:** Single Bench

**Advocate:** A.C. Bhowmik, for the Appellant; A.S. Lodh, Additional Government Advocate, for the Respondent

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### **Judgement**

U.B. Saha, J.

The challenge in this writ petition is the impugned order dated 13.3.2001 issued by the Director of School Education, Govt. of Tripura, Agartala (Annexure-5 to the writ petition) whereby and where under payment on regular scale of pay to the Petitioner has been stopped.

2. Heard Mr. A.C. Bhowmik, learned senior Counsel appearing for the Petitioner as well as Mrs. A.S. Lodh, learned Additional Govt. Advocate appearing for the State Respondents.

3. The pleaded case of the Petitioner is that on 31.7.1990, the Respondent No. 3, the Director of School Education, Government of Tripura, issued the offer of appointment in favor of the Petitioner along with others for the post of Class-IV under the Education Department, Govt. of Tripura, on a consolidated fixed pay of Rs. 525/- only. Subsequently, the Petitioner got another offer of appointment for the post of Group-D staff (over-aged) and posting thereof was also issued by the Respondent No. 3 vide Memo dated 25.9.1992. Accordingly, the Petitioner joined in Sonapur Girl's High School on 19.10.1992 as a Group-D staff and the Respondent No. 3 acknowledged the joining letter of the Petitioner and informed the same vide Memo dated 23.11.1992, Annexure-2 to the writ petition, and the Petitioner was allowed to draw regular scale of pay of Rs. 775-1130/- w. e. f. 19.10.1992 as per office order dated 1.10.1992. As the Petitioner was drawing his pay on regular scale

of pay, he applied for opening of Govt. provident fund, Service Book etc. which was also allowed to the Petitioner. Accordingly, the G.P.F account was opened in respect of the Petitioner and the Service Book was also maintained by the concerned authority treating the Petitioner as a regular employee. As such, the Petitioner was allowed to draw on regular scale of pay up to February, 2001.

4. All on a sudden, on 5.9.2000, the Respondent No. 3 issued a Memo vide No. F. 28(2-12)-DSE/2000 stating that the contention of the office order No. SB (2-6)/DSE/1992(1) dated 1.10.1992 and No. F. 2B (2-6)/DSE/1992(III) dated 1.10.1992 "different categories of teachers and employees recruited in the Education Department up to the said date on consolidated fixed pay basis were allowed regular scale of pay in their respective post with effect from 1.10.1992" is denied and the Petitioner was asked to show cause as to why over payment made to him w. e. f 19.10.1992 up to date in the shape of regular scale of pay instead of what amount is admissible on consolidated fixed pay should not be recovered from him by installments, which will be maximum one-third of present amount of consolidated fixed pay. Thereafter, on 13.3.2001, the Respondent No. 3 directed the Head of Office and D.D.O of the Petitioner to stop payment to the Petitioner on regular scale of pay with immediate effect pending enquiry and decision on the reply to show cause notice to be furnished by him. In the said order, it has also been stated that during pendency of the enquiry etc., the Petitioner and one Manik Lal Sarkar should be paid @ Rs. 1,590/- per month as admissible to the contract Group-D employee vide F.D.'s Memo No. F.4 (16)-FIN (PC)/SS dated 24.11.1999.

5. Hence, the Petitioner by filing this writ petition has prayed for quashing/setting aside the impugned order, dated 13.3.2001, and also for a direction to allow the Petitioner regular scale of pay from the date of his joining.

6. The State Respondents by way of filing their counter affidavit denied the allegations of the Petitioner and in para-6 of the counter-affidavit stated, inter alia, that the Petitioner was appointed as a fixed pay employee vide order dated 23.11.1992 and on the basis of the said order, he joined the service on 19.10.1992 and was drawing consolidated fixed pay of Rs. 500/- per month. Thereafter, it came to the notice of the authority that the regular scale of pay was allowed to the Petitioner with effect from 19.10.1992 by the then DDO without any authority of law. The Petitioner was entertained against the vacant post created vide Memorandum dated 8.6.1989, Annexure R-1 to the counter affidavit, wherein it has been stated that total 300 Class-IV posts were created on consolidated fixed pay of Rs. 500/- per month. It is also stated in the counter-affidavit that the drawing and disbursing officer (DDO) allowed the Petitioner regular scale of pay in last part of February, 1993 basing on a document which is found forged. Not only that the document was an attested copy of one side of a document leaving the overleaf portion and this has made the then D.D.O to commit the mistake. Therefore, the Petitioner cannot be allowed to regular scale of pay by virtue of a forged document taken care of at the

time of allowing regular scale of pay.

7. It is the further case of the Respondent that the D.D.O. while allowing the regular scale of pay to the Petitioner did not obtain any permission from the Head of the Department. No office order on 1.10.92 was issued allowing regular scale of pay to the fixed pay Group-D employees like the Petitioner. As the Petitioner did not hold the post of Group-D on or before 1.10.1992, he is not entitled to regular scale of pay as per office order dated 1.10.1992 (Annexure R-2 to the counter-affidavit). It is also stated by the Respondents in their counter affidavit that the Respondent No. 7 and 8 do not fall in the same category like the Petitioner due to diverse condition in their respective appointment order contained in Annexure-2 and 6 to the writ petition.

8. In paragraph-10 of the counter, it is further stated that the Petitioner is not entitled to the regular scale of pay since the very basis of allowing him the regular scale of pay was based on a document which is not genuine and the authority after issuance show cause notice to the Petitioner proposed for an enquiry stalling the regular scale pay.

9. Mr. A.C. Bhowmik, learned senior Counsel while urging for quashing the impugned order dated 13.3.2001 (Annexure-5 to the writ petition) submits that without any enquiry, the authority stalled the payment of salary to the Petitioner on regular scale of pay. His further contention is that no show cause notice was issued to the Petitioner prior to issuance of the impugned order. He further submits that the Petitioner is a poor paid employee and without providing any opportunity to him, the Respondents all on a sudden stopped payment on regular scale of pay which he is entitled to. Thus, the same is illegal and the impugned order dated 13.3.2001 is liable to be quashed.

10. Mrs. A.S. Lodh, learned Additional Govt. Advocate while resisting the submission of Mr. Bhowmik would contend that unless a person is provided appointment as a regular Group-D employee, he is not entitled to draw on a regular scale of pay and, admittedly, the Petitioner was initially appointed as a Class-IV employee on a fixed pay basis. She further contends that so far as the appointment of the Petitioner as a Group-D employee on a regular pay scale is concerned, it is disputed by the Respondents and the Petitioner was also asked to show cause vide Memo dated 5.9.2010, Annexure-3 to the writ petition and thereafter passed the impugned order dated 13.3.2001.

11. She finally contended that the impugned order dated 13.3.2001 in true sense is not a final order relating to the denial of the regular pay scale, rather the same was issued by the authority till the decision is taken by the authority on the reply to the show cause notice to be furnished by the Petitioner and similarly situated person. She also contended that some of the Group-D employees were appointed on a fixed pay basis and it would be evident from Annexure-6 to the writ petition that the Petitioner is not coming within the purview of the said memorandum. Hence, he is

not entitled to the regular scale of pay and unless a person is entitled to a regular scale of pay, stopping of drawal on such a regular scale of pay cannot be treated as denial of his right.

12. In response to the counter of the Respondents, the Petitioner did not file any rejoinder-affidavit. Therefore, it can be said that the stand taken by the Respondents in the counter-affidavit is admitted by the Petitioner.

13. Having heard the learned Counsel for the parties and on going through the records, particularly, the order of this Court, dated 28.5.2001, passed in misc. application No. 201 of 2009, wherein this Court rejected the prayer for staying of the impugned order dated 13.3.2001 stating, inter alia, that "Here the impugned order was issued on 13.3.2001 and the Petitioner chose to move this Court in mid May, 2001 and as such the stay petition shall not be considered with favor. However, the effect of the pay scale being reduced by the impugned order would be taken care of and the Petitioner would be allowed the benefit if he succeeds in the writ petition." Accordingly, this Court is of the opinion that the Petitioner is not getting the regular scale of pay since the impugned order was issued and the Petitioner also did not challenge the pleadings of the Respondents, inter alia, that the regular scale of pay was provided to the Petitioner on the basis of a document which is not a genuine one that makes it clear that the Petitioner accepted the same. If the basis of allowing regular scale of pay is on the basis of a forged document, then the person who is drawing regular scale of pay basing on such a document, has no right to the said regular scale of pay.

14. However, in the instant case, as the final decision has not been taken by the authority denying the regular scale of pay to the Petitioner, it would not be proper for this Court to make any particular comment on the so called forged document as alleged by the Respondents, but from the impugned order it appears that the payment on regular scale of pay has been stalled for a limited period till the decision is taken on the reply to the show cause notice to be furnished by the Petitioner and others. It is also not clear to this Court whether within the last ten years, there is any development in the matter or the authority proceeded with the proposed enquiry or not and what is the result of the said enquiry, if proceeded. The learned Counsel for the Petitioner is not in a position to submit regarding the latest development of the matter.

15. As the Petitioner did not file any rejoinder to the counter-affidavit, this Court has no other option except to accept the plea of the Respondents, inter alia, that no one can claim any right to anything by virtue of forged document. In the instant case, the authority did not ask for deduction of salary which the Petitioner has drawn even on the basis of the alleged forged document, but only asked for stopping the payment till the enquiry is completed. Therefore, it would be proper for this Court to ask the Respondent authority to proceed with the enquiry if not completed by this time and complete the enquiry within a period of one month providing opportunity

to the Petitioner to participate in the said enquiry proceeding to raise his grievance. If the authority found in the enquiry that the Petitioner was appointed on regular basis as a Group-D employee on regular scale of pay, then he should be provided the benefits he is entitled to as per Rules.

16. With the aforesaid observations and direction, the writ petition is disposed of. No order as to costs.

17. A copy of this judgment and order be furnished to the learned Addl. Govt. Advocate appearing for the State Respondents.