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**(2010) 08 GAU CK 0119**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 584 of 1999**

Haradhan Rishi Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

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**Date of Decision :** 05-08-2010

**Acts Referred:**

Fundamental Rules — Rule 49

**Citation :** (2010) 6 GLR 573

**Hon'ble Judges :** Madan B. Lokur, C.J

**Bench :** Single Bench

**Advocate :** M. Kar Bhowmik, for the Appellant; T.D. Majumder, for the Respondent

**Final Decision :** Allowed

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## Judgement

Madan B. Lokur, C.J.—The case of the Petitioner is that he was working as a Grade IV employee in Ram Thakur College at Agartala. He was sent on deputation to work as an Accompanist (in music) in the Government Music College at Agartala. According to the Petitioner, he worked as an Accompanist in the Government Music College w.e.f. 3.9.1993 to 1.1.1998, i.e., for a period of 51 months 29 days.

2. The Petitioner claimed he was entitled to the salary of Accompanist for the period he was asked to work in that position. However, his claim was denied and so he filed this writ petition praying for the higher pay in accordance with the provisions of Fundamental Rule 49 or the principles inherent therein.

3. In support of his case, the Petitioner, has filed documents to show that he was transferred on deputation to the Government Music College, Agartala by an order dated 24.8.1993. This order, however, states that the Petitioner would be paid his existing scale of pay plus other admissible allowances until further orders. But, by a Memo dated 17.12.1997 the order dated 24.8.1993 was cancelled stating that the provision regarding his scale of pay and admissible allowances was

deleted.

4. In the meanwhile, on 19.8.1994 an office order was issued by the Principal, Government Music College, Agartala asking the Petitioner to take Bachelor of Music classes for the better interests of the College. It is under these broad circumstances that the Petitioner is demanding the higher scale of pay admissible to an Accompanist.

5. There is no dispute that the Petitioner worked as an Accompanist in the Government Music College, Agartala and there is also no dispute that the Petitioner made a demand for payment of higher salary. In its affidavit-in-opposition the State has averred that since the Petitioner did not claim any higher remuneration or pay scale during the period of his deputation, he should not be allowed the higher pay scale. There is no denial of the fact that the Petitioner worked in the position of Accompanist although he was a Grade IV employee. It is orally submitted by learned Counsel for the State that the Petitioner is not entitled to the higher scale of pay because the Principal of the college had no authority to ask him to work as an Accompanist.

6. I am unable to accept the submission advanced by learned Counsel for the Respondents, particularly in view of Fundamental Rule 49(iii), which reads as follows:

FR 49(iii) Where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same, office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post, or of the highest post, if he holds charge of more than two posts. In addition to ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding (45) days but not exceeding 3 months:

Provided that if in any particular case, it is considered necessary that the Government servant should hold charge of another post or posts for a period exceeding 3 months, the concurrence of the (Department of Personnel and Training) shall be obtained for the payment of the additional pay beyond the period of 3 months;

7. The principle laid down by FR 49(iii) is that if an employee is asked to hold a higher post, then he is entitled to a higher pay scale. In the facts of the present case, there is no doubt that the Petitioner was asked to hold a higher post and, therefore, he is entitled to higher pay scale. There is no dispute that the Petitioner fulfills the other requirements of FR 49(iii).

8. That apart, in *Selvaraj Vs. Lt. Governor of Island, Port Blair and Others*, the Supreme Court considered a somewhat similar situation and it was held, on the principle of quantum meruit, that the Respondent authority should pay the Appellant therein the remuneration available in the higher pay scale during the time that the Appellant was in the post under consideration. Applying the ratio of

the decision laid down by the Supreme Court [apart from the mandate of FR 49 (iii)] there is no doubt that the Petitioner would be entitled to a higher pay scale for the period he worked as an Accompanist while he was originally holding the post of a Grade IV employee.

9. Under the circumstances, the writ petition is allowed. The Respondents are directed to make the balance payment to the Petitioner within a period of eight weeks from today. It is, however, made clear that payment of the difference in amount of salary shall not be construed as a promotion given to the Petitioner. No costs.