

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.11/2023

Smt. Mousumi Sarkar, wife of Sri Ashok Kumar Das, resident of Dakshin Charipara, P.O.-Charipara, P.S.-Amtali, Sub-Division-Agartala, District-West Tripura, PIN-799003, aged about 36 years.

.....Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary, Education Department, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

2. The Commissioner & Secretary to the Education Department, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

3. The Director of School Education, Education Department, Government of Tripura, having his office at Shiksha Bhawan, Office Lane, P.O.-Agartala & P.S.-West Agartala, Sub-Division-Agartala, District-West Tripura.

4. Sri Johnson Tripura, Son of Late Kali Kumar Tripura, resident of Sonai Bazar, Sonai Chari, P.O.-Sonai Bazar, District-South Tripura, PIN-799145.

.....Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mrs. Riya Chakraborty, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharya, G.A.,
Mr. Samarjit Bhattacharjee, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **09th August, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Somik Deb, learned senior counsel assisted by Mrs. Riya Chakraborty, learned counsel appearing for the petitioner, Mr. Debalay Bhattacharya, learned Government Advocate appearing for the State

respondents and Mr. Samarjit Bhattacharjee, learned counsel appearing for the private respondent.

2. The recruitment exercise in question was undertaken by Teachers' Recruitment Board, Tripura (TRBT), Education (School) Department, Government of Tripura under an advertisement at Annexure-1 to the writ petition in the year 2017 for filling up posts of Post-Graduate Teacher in various educational institutions in the State of Tripura. Petitioner participated in the recruitment exercise in the subject of History where 123 posts were notified amongst which 60 posts were allotted to unreserved (UR) category, 19 posts to Scheduled Caste (SC) category, 36 posts to Scheduled Tribe (ST) category, 4 posts to Physically Handicapped (PH) category and 4 posts were allotted to Ex-Serviceman (ESM) category. Petitioner belongs to the unreserved (UR) category. In the merit list at Annexure-2 to the writ petition, petitioner is shown as having secured 91 marks. 5(five) candidates have secured 91 marks out of whom 4(four) have been appointed but petitioner has been left being the youngest. This is the stand of the State-respondents also in the counter affidavit. The petitioner has, on the other hand, also questioned the appointment of respondent No.4 who had secured 104 marks in the ST category as he was not having the requisite qualification of Degree of Bachelor of Education (Regular) as required under the advertisement. This issue had crossed the attention of this Court wherein a Division Bench judgment of this Court vide judgment dated 19.12.2018 passed in **WP(C) No.1138 of 2016** [*Smt. Sudipa Saha vrs. The State of Tripura & others*] and analogous cases held that the qualification of B.Ed. (Special Education) could not be a valid

eligibility criteria for appointment of a teacher in Senior and Senior Secondary classes. However, the learned Division Bench did not interfere in the appointment of candidates by observing as such:

"Further, what is required to be seen are the conditions prescribed at the time of issuance of the advertisement and not the subsequent decision, if any, taken by the government, modifying the conditions which the petitioners fulfill. Well that is for future and not for the past."

(emphasis supplied)

3. Respondent No.4 has pursued the B.Ed. (Regular) upon permission granted by the employer and has also acquired that qualification. Later on, he approached this Court in WP(C) No.87 of 2023 with a prayer for granting regular scale of pay upon completion of 5 years of service. The learned Writ Court vide order dated 10.02.2023 directed the respondents to consider his representation. Petitioner herein has however, approached this Court in the year 2023 after 5 years of the appointment. The journey of litigation on the issue of qualification of B.Ed. (Special Education) is the ground taken for excusing her for the delay in approaching this Court. But delay apart, now from the averments and documents on record, it is apparent that following the settled principles in case of such nature, the petitioner being the youngest amongst 5(five) candidates in UR category was not appointed though all of them had same 91 marks. She appears to have remained silent on her grievance for a period of 5 years whereafter she has approached this Court in the year 2023. It is not a case of the petitioner that anyone having lesser marks than the petitioner has been appointed in the same exercise in the subject of History in UR category.

4. The second plea raised by the petitioner vis-à-vis respondent No.4 is also not acceptable for the reason that the services of the respondent No.4 and such other candidates who possessed the educational qualification of B.Ed. (Special Education) on the cutoff date of advertisement were protected by virtue of the Division Bench judgment of this Court rendered on 19.12.2018 in the case of *Smt. Sudipa Saha* (supra). The respondent No.4 seems to have acquired the qualification of B.Ed. (Regular) after permission from the employer during his service. At this stage, it is, therefore, not open to question the eligibility criteria of the respondent No.4 for the purposes of annulment of his appointment and allow the petitioner to be accommodated on the said post.

5. Mr. Debalay Bhattacharya, learned Government Advocate appearing for the respondents-State, has also informed that beyond the select list of 87, unfilled vacancies out of total 123 vacancies for the subject of History have been carried to subsequent recruitment exercise. In that case, the plea of the petitioner to consider herself for the unfilled vacancies also cannot be entertained at this length of time.

6. As such, this Court does not find any merit in the writ petition which is accordingly dismissed.

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

(APARESH KUMAR SINGH), CJ