

**HIGH COURT OF TRIPURA  
AGARTALA  
WP(C) 22/2023**

**Sri Raju Debnath,**

son of Sri Nimai Debnath, resident of  
Village-Suryamaninagar P.O.-Tripura University,  
PS-Amtali, Sub-division-Sadar, District-West  
Tripura, aged about 32 years.

.....Petitioner

**Versus**

**1. The State of Tripura,**

represented by the Commissioner & Secretary,  
Education Department, Government of Tripura,  
having his office at Secretariat Building, P.O-Kunjaban,  
P.S-New Capital Complex, District-West Tripura,  
Pin-799006.

**2. The Commissioner & Secretary,**

Education Department, Government of Tripura,  
having his office at Secretariat Building, P.O-Kunjaban,  
P.S-New Capital Complex, District-West Tripura,  
Pin-799006.

**3. The Director,**

Higher Education, Government of Tripura,  
having his office at Shiksha Bhawan, Office Lane,  
P.O-Agartala, P.S-West Agartala, District-West  
Tripura, Pin-799001.

**4. The Teachers' Recruitment Board, Tripura,**

represented by its Member Secretary, Education (School)  
Department, Government of Tripura, having his office at  
Shiksha Bhawan, Office Lane, P.O-Agartala, P.S-West  
Agartala, District-West Tripura, Pin-799001.

**5. The Member Secretary, Teachers' Recruitment Board,**

Tripura, Education (School) Department, Government of  
Tripura, having his office at Shiksha Bhawan,  
Office Lane, P.O-Agartala, P.S-West Agartala,  
District-West Tripura, Pin-799001

.....Official Respondents

**6. Smt. Lianmawia Darlong,**

daughter of Nghakdinga Darlong

**7. Sri Sudha Thakur Jamatia,**

son of Late Braja Mohan Jamatia

8. **Sri Jacob Molsom**, son of Sri Shilabasi Molsom.
9. **Sri Ranjit Mohan Molsom**, son of Sri Isathang Molsom.
10. **Smt. Angita Debbarma**, daughter of Sri Sadhan Debbarma.
11. **Smt. Chameli Jamatia**, daughter of Sri Dharma Sadhan Jamatia.
12. **Smt. Namita Reang**, son of Sri Mistajoy Reang.

**....Private Respondents**

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For Petitioner(s) : Mr. Somik Deb, Sr. Advocate  
Mr. A. Baran, Advocate

For Respondent(s) : Mr. D. Bhattacharjee, GA  
Mr. S. Saha, Advocate

Date of hearing & delivery : **21.02.2023**  
of judgment & order

Whether fit for reporting : **No**

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**HON'BLE MR. JUSTICE ARINDAM LODH**  
**Judgment & Order (Oral)**

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. A. Baran, learned counsel appearing for the petitioner. Also heard Mr. D. Bhattacharjee, learned GA, assisted by Mr. S. Saha, learned counsel appearing for the State- respondents.

2. By means of filing the present writ petition, the petitioner has challenged the percentage of reservation in filling up the posts in 'History' subject.

3. Briefly stated, the petitioner graduated with Masters in History from Tripura University in the year 2015. Thereafter, in the year 2018, the petitioner has completed the course of Bachelor in Education from Institute of Advanced Studies in Education, Agartala, West Tripura. The petitioner

appeared in Teacher's Recruitment Board of Tripura (for short, 'TRBT') in response to a notification dated 29.07.2022. Under notification dated 29.07.2022, there were 15 vacancies out of which 5 posts were meant for UR candidates, 2 posts for SC candidates and 8 posts for ST candidates, for the subject 'History'. The TRBT had issued the result of selection process for the post of Post Graduate Teacher, 2020 alongwith caste category of the candidates and the total marks secured by them, wherefrom it would be crystal clear that the petitioner obtained 123 marks in the said test. Subsequently, TRBT issued a notification dated 06.12.2022, publishing subject-wise merit list for the post of PGT, 2020 selecting 20 candidates, and the petitioner was not selected irrespective of the fact that the petitioner had secured more marks than the private respondents. Hence, this writ petition is presented.

4. In para 2.3.1, the petitioner has stated thus:-

**"2.3.1. At this stage, it would be crucial to refer herein to the statutory mandate, contained in Section 4 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 (Act for short) which inter alia mandates that in case of direct recruitment to the vacancy or vacancies in the services or posts in an establishment, there shall be a maximum of 17% reservation, in favour of the Scheduled Castes candidates and 31% reservation, in favour of the Scheduled Tribes candidates- thus there can be a maximum of 48% reservation, in favour of the SC & ST candidates."**

5. The main contention of the petitioner is that the respondents had carried forward the vacancies in the posts of 'History' for 3 consecutive recruitment years. For the first time, it was initiated in the year 2017-18, where reservation of each category candidates were determined in

compliance of the provision contained in Section 4 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 (for short, Act of 1991) and, Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 (for short, Rules, 1992) thereunder. The vacancies which were not filled up during the recruitment year 2017-18 were carried forward to the next recruitment year i.e. 2018-19 to fill up the vacant posts of history teachers. The posts which were not filled up during the recruitment year 2018-19 were further carried forward to the subsequent recruitment year 2022-23. Here is the challenge alleging reservation of posts in “History” is arbitrary and contrary to Sub-rule 8(c) of Rule 8 of Rules 1992.

6. Mr. Deb, learned senior counsel appearing for the petitioner has submitted that the vacancies to fill the posts of ‘History’ subject can be carried forward only during the next recruitment year i.e. subsequent after the initial recruitment year. It cannot be further carried forward as contemplated in Sub-rule 8(c) of Rule 8 of the Rules, 1992. The relevant rule reads as under:

**“(8) (c) If the required number of candidates are not available even after further attempt within a recruitment year the reserved vacant posts shall be carried forward to the next recruitment year. ...”**

7. This question came up before a Division Bench of this court, in which, I was member and the court in the case of *Pankaj Bhowmik vs. The State of Tripura and others*, in *W.A. 458 of 2020*, held thus:

**“19. Under the second amendment Rules, 2007 the State’s lawmakers only preferred to limit their exercise to the extent of the insertion of the words**

“vacant posts” in clause (c) of sub-rule 8 of Rule 8 of Rules, 1992, which reads as under:

***“(c) If the required number of candidates are not available even after further attempt within a recruitment year the reserved [vacant posts] shall be carried forward to the next recruitment year”.***

20. The language of this provision, according to us, is very clear and unambiguous. The well-known principle is that Rule of “literal construction” is the safe rule and should be followed unless the language used is contradictory, ambiguous, or leads really to absurd results. Besides, legislation is always to be understood first in accordance with its plain meaning. A plain reading of sub-rule 8(c) of Rule 8 of amended Rules, 2007 makes it clear that despite Clause (4-B) of Article 16 of the Constitution of India, the State Government had consciously taken a decision that the unfilled vacancies if not filled up within a recruitment year, the reserved [vacant posts] shall be carried forward to the next recruitment year. In other words, the law-makers wanted to limit carry forward rule to fill up the reserved [vacant posts] i.e. backlog vacancies up to the next recruitment year only and not in any further subsequent/succeeding years. It is clarified that the expression *“if the required vacancies of candidates are not available even after further attempt within a recruitment year”* would mean and connote that the authorities concerned can exercise the process of recruitment indicating the unfilled backlog vacancies for a number of times within the same year i.e. initial/first recruitment year.

21. On careful reading of sub-rule 8(c) of Rule 8 of the Rules, 1992 as amended in 2007, we are of the considered opinion that while Article 16 (4-B) had given wide discretion upon the State Government/Legislature for enacting any law to decide the number of year or years up to which unfilled vacancies will be carried forward, the State Government under Clause (c) of sub-rule (8) of Rule 8 of the Rules, 1992 legislated that in case the required number of candidates are not available even after further attempt within a recruitment year, the reserved vacant posts shall be carried forward to the next recruitment year.

22. The Hon'ble Supreme Court in *Dr. Jaishri Laxmanrao Patil (supra)* it was held [*per majority*] while interpreting a newly inserted provision which was enacted to bring it in alignment with existing *pari materia* provisions, the Court should not be unmindful of the existing constitutional provisions. When constitutional amendments introduce new definition, judicial interpretation has leaned in favour of giving literal meaning to the terms used which had led to change. The Supreme Court on numerous occasions has given full literal effect to the terms of the amendment brought in by the legislature, after understanding the rationale for the change.

23. By now, it is well-settled that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all [*AIR 1936 PC 253(2)*]. In the case of *Ramchandra Keshab Adke Vrs. Govind Joti Chavare*, reported in *AIR 1975 SC 915*, the apex court held that *when a power is given to do certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden*. In the instant cases, the advertising department, i.e. the Director of Health Services, Govt. of Tripura, the respondent no.2 in both the appeals and the respondent

no.5 in the writ petition, have no power to carry forward backlog vacancies years after years, which if allowed, will be in direct conflict with the provisions encrypted in the Rules, 1992. Such unauthorized act of the Director of Health Services, Government of Tripura in both the appeals and the Member Secretary, Teacher's Recruitment Board, Tripura, Office of the School Education, Govt. of Tripura, in the writ petition, had given undue advantage to the reserved category of candidates which offends the equality clause in the matter of appointment as enshrined under Article 16 of the Constitution of India. The action of the official respondents invites inequality amongst the equals. The official respondents ought to have taken into account that relevant provision under Clause (c) of sub-rule (8) of Rule 8 of the Rules, 1992 clearly provides carry forward rule to fill up the backlog vacancies only limited up to the next recruitment year as stated above in para 20 of this judgment. Thus, by way of by-passing the mandatory provision of sub-rule(c) of sub-rule (8) of Rule 8 of SC & ST Rules, 1992, the official respondents have committed a vital mistake in overlooking statutory dictum as provided therein. The State-respondents ought not have violated the statutory provisions. It is well settled that there is no estoppel against law or statute. We have noticed, in the instant cases, statutory violation ought to have subsisting since inception, i.e., since the date of publication of the employment notification for filling up the vacancies in the posts of Pharmacist (Allopathy) under the Directorate of Health Services.

24. In our considered view, since *the official respondents acted contrary to law and in contravention of the Rules,1992 (as amended in 2007), they had violated the statutory provisions, and in that case, the respondents are prohibited to take the plea of estoppels to defend such unlawful act. Clause(c) of sub-rule (8) of Rule 8 of the Rules,1992 is such provision which cannot be waived or dispensed with on the ground of estoppel and if such violation is permitted, then, it would ultimately tantamount to repeal the provision which is inserted in the statutory rule with a view to uphold constitutional ethos. Doctrine of estoppel is founded on the principles of equity and the issues of constitutional validity cannot be thwarted, by applying the doctrine of estoppel.* Bearing in mind the aforesaid principle, we are unable to agree with the decision of learned Single Judge that the challenge made by the petitioners suffers from the doctrine of estoppel.

25. In the above conspectus, the conclusion is inevitable that the official respondents have breached the mandatory provision embodied in Clause(c) of sub-rule (s) of Rule 8 of the Rules, 1992 (Second amendment,2007) in following the carry forward rule to fill up the unfilled vacancies in the posts of Pharmacist (Allopathy) from reserved category of candidates in succeeding recruitment years including the current recruitment under employment notification dated 30.10.2013, issued by the Director of Health Services and the notification dated 15.07.2022 issued by the respondent no.3 in the writ petition. It is clearly held under Clause(c) of sub-rule(8) of Rule 8 of SC & ST Rules, 1992 that unfilled reserved backlog vacancies shall be carried forward only after the first recruitment year in any posts and not in the succeeding years.

26. Under Clause(c) of sub-rule (8) of Rule 8 of the Rules, 1992 the State is barred to apply carry forward rule to clear backlog vacancies of reserved category candidates beyond next recruitment year. We make it clear that “next recruitment year” means the year followed by the first recruitment process in a particular year. As for example, a department issues an employment notification in the year 2021 for filling up of 100 posts in a particular category. For this purpose, 50% have been kept reserved for reserved category candidates as per the State’s roster. After completion of the said selection process, the department finds only 30 candidates eligible for filling up the said posts identified for reserved category candidates. Remaining 20 (twenty) unfilled posts, if kept vacant, these will be treated as “backlog vacancies”. If the required numbers of candidates are not available, then, the authorities concerned may make further attempts to fill up the unfilled vacancies within the same year i.e. initial/first recruitment year. Now, suppose, in the year 2023, Govt. has created another 150 posts of the same category. Out of these 150 posts, 50% posts will be kept reserved for reserved category candidates and further, 20 unfilled vacancies of 2021 will be added to determine the total vacancies meant for reserved category candidates and it would be  $75 + 20 = 95$  that is, 95 posts which will be kept reserved because it will be the next recruitment year i.e. 2nd recruitment year followed by the first recruitment year 2021. Again, suppose, out of 95 posts the department may find 80 candidates suitable for appointment, which means that 15 vacancies belonging to reserved category have not been filled up. Thereafter, the department again has issued fresh employment notification in the year 2025 for filling up 50 vacancies of the same category of posts. The department as usual will notify 50% vacancies for candidates belonging to unreserved category. But, in that recruitment year, i.e.2025, if the department tries to fill up the backlog vacancies of 15 which could not be filled up in the year 2023, by way of following carry forward rule, then, it will violate the mandatory provision as contemplated in Clause (c) of sub-rule (8) of Rule 8 of the Rules, 1992 as amended by second amendment, 2007.

27. In the cases in hand, we find no inconsistency or irrationality to the legislation brought in by the State Government under sub-Rule 8(c) of Rule 8 of amended Rules, 2007. The State Government was well aware of the fact that the object and purpose of insertion of Article 16(4-B) by way of Eighty-first Amendment of the Constitution of India is to enable the State Governments to legislate its own law considering the socioeconomic scenario of the State as well as overall efficiency in administration as enshrined in Article 335 of the Constitution of India.

28. In the opinion of this court, when the State law-makers had clear intention to apply carry forward rule for clearing the “backlog vacancies” up to the next recruitment year, that is, after the initial recruitment year, the court has no jurisdiction to read and construe/interpret it otherwise which will definitely defeat the object and purpose of the legislation brought in by the State law-makers under Sub- Rule 8(c) of Rule 8 of amended Rules, 2007. We re-iterate that *the State legislature has thought it fair and just to apply the carry forward rule only up to the next recruitment year and not years any further or subsequent years. (emphasis supplied)*

29. It is evident from the counter affidavits and additional counter affidavits filed by the State-respondents as well as the submission of learned G.A. that 'backlog vacancies' to fill up the post of reserved category candidates are being carried forward for a number of recruitment years after introduction of SC & ST Act and the Rules, 1992. According to us, it is inconsistent to and in contravention to Clause (c) of sub-rule 8 of Rule 8 of amended Rules, 2007. Therefore, this is a continuous breach of a statutory provision which escaped the notice of the executives who have the primary duty to strictly adhere to the legislative decision enshrined in the statute, and therefore, must be stopped here to prevent further breach of legislative intent and object of the legislatures to protect the interest of public in general for whose interest particular legislation was introduced. The State-respondents have committed a serious error in law to identify and keep 60 seats for reserved category candidates out of total 73 posts for filling up the vacant posts of Pharmacist (Allopathy), which is the subject matter in both the appeals; so also the subject matter of the writ petition where out of 230 posts of Graduate Teachers, 201 numbers of posts were kept reserved for SC and ST candidates. We may in the context of the case, unhesitatingly hold that reservation in excess of 50% ceiling limit is inconsistent and contrary to law as contemplated under Sub-Rule 8(c) of Rule 8 of Rules, 1992.

30. This Court in WP(C) No. 736 of 2022, by way of interim order asked the respondents to continue the selection process, but, not to declare the results of the examination. As we have already held in the above writ appeals that ceiling limit of 50% cannot be breached in any manner whatsoever, in the succeeding recruitment years beyond the second year of recruitment followed by the first recruitment year. It is evident that so many recruitment processes for recruitment of Graduate Teachers in many subsequent recruitment years since the enactment of "Rules, 1992" have already been undertaken for filling up reserved vacant posts i.e. the backlog vacancies of Graduate Teachers by way of applying the carry forward rule, which exercise, according to us, were carried out in direct contravention to Clause (c) of sub-rule 8 of Rule 8 of the Rules, 1992. In our considered view, the mistakes already committed by the State executives in filling up the posts of Graduate Teachers in the State as aforesaid is unrepairable; however, such illegalities committed by the respondents-authorities during the previous years cannot be permitted to perpetuate by continuous mistake.

31. Here, we shall be failing to our solemn duty if we do not stop the recurrence of such flouting of a statutory provision as enshrined in subrule 8(c) of Rule 8 of the Rules, 1992. It is for this reason such illegal exercise or practice must be stopped here i.e. from the present recruitment year in question and for all times to come. Excessive reservation beyond ceiling limit of 50% rule, if not permitted or supported by any law or statute, is illegal, arbitrary and discriminatory.

32. It is not unknown to this court that there is dearth of competent and adequate Pharmacists (Allopathy) in the State of Tripura. If the posts are allowed to remain vacant for non-availability of eligible reserved category candidates for the years to come, then, the health services, which the Government is necessarily to provide to its people, will badly be affected.

Similarly, complaints against adequate numbers of teachers in the schools are a regular phenomenon in the State. So, if the vacancies in the posts of teachers are not filled up, then, the education system of the State will also be adversely affected when right to education has been made a fundamental right. Absence of adequate numbers of teachers will frustrate the object the law-makers wanted to achieve through providing of qualitative education.

33. Before we conclude, we must say, that, it is settled proposition of law that the number of backlog reserved vacancies form a separate class and is treated as a distinct group and are excluded from the ceiling limit of 50% reservation. In the instant cases, these backlog reserved vacancies which are being carried forward in the recruitment year under notification dated 30.10.2013 in WA No. 458/2020 and WA No.460/2020, for filling up the posts of Pharmacist (Allopathy) and the notification dated 15.07.2022 in WP(C) No.736/2022, for filling up the posts of Graduate Teachers are illegally kept reserved in contravention to sub-rule 8(c) of Rule 8 of Rules, 1992. However, the mistake as discussed in detail in the preceding paragraphs has been committed by the official respondents in carrying forward the vacant reserved posts for years together including the notification dated 30.10.2013, for which, according to us, the appointments already made from this distinct group have not been disturbed by this court. More so, we are in agreement with Ld. Single Judge that no malpractice is found to be committed in the selection process as alleged by the petitioners/appellants for filling up the posts of Pharmacist (Allopathy), and in this respect, the common judgment and order dated 15.09.2020 passed by the learned Single Judge in WP(C) No.134 of 2015 and WP(C) No.135 of 2015 is not interfered with.

34. For the reasons stated and discussed here-in-above, we pass the following directions in WA No. 458/2020 & in WA No.460/2020:-

(i) The action of the official respondents to reserve 60 posts out of 73 posts for filling up the posts of Pharmacist (Allopathy) in the employment notification

dated 30.10.2013 is illegal, arbitrary and discriminatory and in contravention to Clause (c) of sub-rule(8) of Rule 8 of the Rules, 1992 being in excess of ceiling limit of 50% reservation.

(ii) There shall not be application of carry forward rule in the matter of appointment/filling up of the posts of Pharmacist (Allopathy) under the employment notification dated 30.10.2013.

(iii) The posts which are in excess of ceiling limit of 50% rule, shall be filled up by general category candidates, if not already filled up by reserved category candidates, that is, from the candidates belonging to the distinct group. It is made clear that the appointments already made in the posts of Pharmacist (Allopathy) by applying the carry forward rule under notification dated 30.10.2013 shall not be disturbed. It is further made clear that if any vacancies under the same notification still exists and left vacant those shall be filled up by general category candidates according to their merits and in that case, the official respondents shall prepare and publish the merit list of general category candidates.

(iv) The official respondents shall not apply the carry forward rule in any of the future recruitment process for filling up the vacant posts of Pharmacist (Allopathy).

**34.1 Directions in WP(C) 736 of 2022**

(i) The employment notification dated 15.07.2022, issued by the Member Secretary, Teachers Recruitment Board, Tripura (TRBT), for filling up the posts of 'Graduate Teacher' for the Classes-IX-X, wherein, 201 posts have been kept reserved out of 230 posts, is also interfered with to the extent that the number of vacancies carried forward shall not be given effect to.

(ii) The selection of reserved category candidates must be limited to 50% for filling up the total number of posts of 'Graduate Teacher' under the notification dated 15.07.2022. The respondents shall prepare the select list following the said ceiling limit of 50% rule for reservation.

(iii) The official respondents shall not apply the carry forward rule in any of the future recruitment process for filling up the vacant posts of 'Graduate Teacher'.

35. In the light of the above observations and directions, the impugned common judgment and order, dated 15.09.2020, passed in WP(C) No. 134 of 2015 and WP(C) No. 135 of 2015 by learned Single Judge is modified to the extent as indicated above.

36. As a sequel, both the writ appeals, accordingly, stand disposed in the aforesaid terms, and the writ petition [W.P.(C) 736 OF 2022] filed by the petitioner, stands allowed and disposed to the extent as indicated above. In the above conspectus, the interim order dated 09.09.2022, passed in WP(C) No.736 of 2022, shall stand disposed."

8. Having regard to the principles laid down in the case of *Pankaj Bhowmik (supra)*, this court has perused pleadings exchanged between the parties and considered the submissions of learned senior counsel appearing on behalf of the petitioner. In the context of the case, it is apparent that the first recruitment process in history subject was initiated in the year 2017-18. The unfilled vacancies were carried forward further during the next recruitment year i.e. 2018-19. According to Clause (c) of Sub-rule (8) of Rule 8 of the Rules, 1992, the vacancies which were not filled up in the first recruitment year i.e. initial recruitment year, can be carried forward in the

next recruitment year i.e. in the immediate next recruitment year. It cannot be carried forward further during the successive recruitment year/years.

9. When the matter came up yesterday before this court, learned GA appearing for the respondents-State has sought for certain instructions from the respondents. Learned GA has drawn the attention of this court made in para 5 of the counter affidavit, which is reproduced here-in-below, for convenience, in extenso:

**“5. That, with respect to paragraph-1, I say that the Recruitment of Post Graduate Teachers under the Education (School) Department, Tripura has been initiated through the Selection Test for Post-Graduate Teachers (STPGT) conducted by the Teachers’ Recruitment Board, Tripura (TRBT short) in 2017. The detailed vacancy position and subsequent recruitment status in respect of Post-Graduate Teachers (History) since 2017 is shown below:**

| Particulars                                                                                      | UR           | ST            | SC           | Total         |
|--------------------------------------------------------------------------------------------------|--------------|---------------|--------------|---------------|
| The vacancy position at the beginning of the Recruitment year 2017-18                            | 91           | 54            | 30           | 175           |
| Subsequent Recruitment as per the recommendation of the TRBT during the Recruitment year 2017-18 | 85           | 27            | 26           | 138           |
| Available Vacancy after Recruitment                                                              | 6<br>(ESM-2) | 27<br>(ESM-1) | 4<br>(ESM-0) | 37<br>(ESM-3) |

During the Recruitment year 2018-19, the backlog vacancy has been filled up and the status is furnished below:

| Particulars                                                                                      | UR           | ST            | SC           | Total         |
|--------------------------------------------------------------------------------------------------|--------------|---------------|--------------|---------------|
| Backlog of the previous Recruitment year                                                         | 6<br>(ESM-2) | 27<br>(ESM-1) | 4<br>(ESM-0) | 37<br>(ESM-3) |
| Subsequent Recruitment as per the recommendation of the TRBT during the Recruitment year 2018-19 | 2            | 12            | 2            | 16            |
| Available Vacancy after Recruitment                                                              | 4<br>(ESM-2) | 15<br>(ESM-1) | 2<br>(ESM-0) | 21<br>(ESM-3) |

Due to the COVID situation, the recruitment process was not initiated during the Recruitment Year 2019-20 & 2020-21. In the Recruitment Year 2021-22, no recruitment for the post of Post-Graduate Teacher in History was processed. At the beginning of the Recruitment Year 2022-23, the vacancy position of PGT (History) is shown below:

| Particulars                                                                     | UR            | ST            | SC            | Total         |
|---------------------------------------------------------------------------------|---------------|---------------|---------------|---------------|
| Backlog of the previous Recruitment year                                        | 4<br>(ESM-2)  | 15<br>(ESM-1) | 2<br>(ESM-0)  | 21<br>(ESM-3) |
| The vacancy arises due to retirement/death etc.                                 | 8             | 5             | 2             | 15            |
| The resultant vacancy position at the beginning of the Recruitment year 2018-19 | 12<br>(ESM-3) | 20<br>(ESM-1) | 04<br>(ESM-0) | 36<br>(ESM-3) |

It is mentioned here that the Finance Department, Tripura concurred for filling up 110 (one hundred ten) posts of Post Graduate Teachers and as per the requirement of the Education (School) Department, it was decided to fill up 15 posts of Post Graduate Teachers in History (out of 110 posts).

Out of 36 vacant posts of Post-Graduate Teachers in History, the Education (School) Department decided to fill up of 15 posts of Post-Graduate Teachers in History through direct recruitment which was 41.6% of the total vacancy of the Post-Graduate Teachers in History under the directorate of Secondary Education. These 20 posts are not newly sanctioned posts but within the sanctioned strength.

Accordingly, 20 posts of Post-Graduate Teachers in History have been rationalized in the following manner for filling up:

| Particulars                                                                          | UR | ST | SC | Total |
|--------------------------------------------------------------------------------------|----|----|----|-------|
| Rationalization of 15 posts at the rate of 41.6% of actual vacancy for each category | 5  | 8  | 2  | 15    |

In this regard, it is mentioned that TRBT has been advertised for filling up 15 posts of Post-Graduate Teachers in History from the existing vacancies, not for filling up newly sanctioned posts. For filling up of existing vacancies, the category of the vacant posts is considered for recruitment, not the standard reservation norms of 17% reservation for the Scheduled Caste & 31% reservation for the Scheduled Tribe.

10. From the above statements, it comes to fore that the vacancies to fill up the posts of 'History' subject was first initiated in the recruitment year 2017-18. Thereafter, for second time, in the year 2018-19 and the backlog vacancies which were not filled up even during the next recruitment year after the initial recruitment year 2017-18 were carried forward again in the year 2022-23. Under Clause (c) of Sub-rule (8) of Rule 8 of the Rule, 1992, the un-filled vacancies cannot be carried forward after the immediate next recruitment year, that is, unfilled vacancies can only be carried forward upto the second recruitment year after the first recruitment year. At the cost of repetition, it is re-iterated that the respondents by way of carrying forward the unfilled vacancies during the third recruitment year i.e. 2022-23, is contrary to Clause (c) of Sub-rule (8) of Rule 8 of the Rules, 1992 and the principles laid down by this court in case of *Pankaj Bhowmik (supra)*.

**11.** In view of above discussion, I direct the respondents to re-arrange the select list keeping in mind that reservation cannot exceed ceiling limit of 50% and in compliance of Section 4 of the Act of 1991.

**12.** Accordingly, the notification dated 06.12.2022 stands set-aside and quashed with respect to the reservation of vacancies to fill up the posts of teachers in “History” subject. The entire process shall be completed within a period of 6 (six) weeks from today in terms of the above directions.

**13.** With the above observations and directions, the instant writ petition stands allowed and thus disposed of.

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

**JUDGE**