

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.90/2023

Dr. Jayanta Dhar, S/O. Sri Adhir Chandra Dhar, R/O. Vill.-Hapania Hospital Chowmuhani, P.O.: -ONGC, Badharghat, P.S.: -Amtali, District:-West Tripura, Aged about:-35 years, by profession-Asst. Professor, PIN- 799014.

.....Petitioner(s).

V E R S U S

1. The State of Tripura, Represented by its Principal Secretary, Higher Education Department, Govt. of Tripura, P.O.: -Kunjaban, P.S.: -New Capital Complex, District:-West Tripura, PIN:-799001.
2. The Director of Higher Education, Higher Education Department, Govt. of Tripura, P.O.: -Agartala, P.S.: -West Agartala, District:-West Tripura, PIN:-799001.
3. The Tripura Public Service Commission, Represented by its Secretary, Akhaura Road, P.O.: -Agartala, P.S.: -West Agartala, District:-West Tripura, PIN:-799001.
4. The Secretary, Tripura Public Service Commission, Akhaura Road, P.O.: -Agartala, P.S.: -West Agartala, District:-West Tripura, PIN:-799001.
5. The Under Secretary, Tripura Public Service Commission, Akhaura Road, P.O.: -Agartala, P.S.: -West Agartala, District:-West Tripura, PIN:-799001.
6. Smt. Sthiti Dasgupta, D/O-Lt. Haripada Dasgupta.
7. Sri Ankur Sarkar, S/O-Subodh Sarkar.
8. Smt. Priyanka Bhowmik, D/O-Manindra howmik.
9. Smt. Binita Basfore, D/O- Lt. Rabi Basfore.
10. Sri Debakanta Debbarma, S/O- Astaram Debbarma.
11. Smt. Juthika Naukham, D/O- Mahendra Naukham.

Notice upon Respondent No.6 to 11 to be served through the Respondent No. 2.

.....Respondent(s).

Along with

WP(C) No.1021/2022

Dr. Anindita Choudhury, W/O. Sri Animesh Majumder, D/O. Sri Durga Sankar Choudhury, R/O. Dhaleshwar, Road No.17, P.O.: -Dhaleshwar, P.S.: -East Agartala, District:-West Tripura, PIN- 799007, Age:-36 years.

.....Petitioner(s).

V E R S U S

1. The State of Tripura, Represented by its Principal Secretary, Higher Education Department, Govt. of Tripura, P.O.: -Kunjaban, P.S.: -New Capital Complex, District:-West Tripura, PIN:-799001.
2. The Director of Higher Education, Higher Education Department, Govt. of Tripura, P.O.: -Agartala, P.S.: -West Agartala, District:-West Tripura, PIN:-799001.
3. The Tripura Public Service Commission, Represented by its Secretary, Akhaura Road, P.O.: -Agartala, P.S.: -West Agartala, District:-West Tripura, PIN:-799001.
4. The Secretary, Tripura Public Service Commission, Akhaura Road, P.O.: -Agartala, P.S.: -West Agartala, District:-West Tripura, PIN:-799001.
5. The Under Secretary, Tripura Public Service Commission, Akhaura Road, P.O.: -Agartala, P.S.: -West Agartala, District:-West Tripura, PIN:-799001.
6. Smt. Sthiti Dasgupta, D/O-Lt. Haripada Dasgupta.
7. Sri Ankur Sarkar, S/O-Subodh Sarkar.
8. Smt. Priyanka Bhowmik, D/O-Manindra howmik.
9. Smt. Binita Basfore, D/O- Lt. Rabi Basfore.
10. Sri Debakanta Debbarma, S/O- Astaram Debbarma.
11. Smt. Juthika Naukham, D/O- Mahendra Naukham.

Notice upon Respondent No.6 to 11 to be served through the Respondent No. 2.

.....Respondent(s).

WP(C) No.1022/2022

Dr. Amal Debnath, S/O. Lt. Banka Bihari Debnath, R/O. College Tilla, Lake View Quarter, P.O.:- College Tilla, P.S.:-East Agartala, District:-West Tripura, PIN- 799004, Aged about:-42 years.

.....Petitioner(s).

V E R S U S

1. The State of Tripura, Represented by its Principal Secretary, Higher Education Department, Govt. of Tripura, P.O.:-Kunjaban, P.S.:-New Capital Complex, District:-West Tripura, PIN:-799001.
2. The Director of Higher Education, Higher Education Department, Govt. of Tripura, P.O.:-Agartala, P.S.:-West Agartala, District:-West Tripura, PIN:-799001.
3. The Tripura Public Service Commission, Represented by its Secretary, Akhaura Road, P.O.:-Agartala, P.S.:-West Agartala, District:-West Tripura, PIN:-799001.
4. The Secretary, Tripura Public Service Commission, Akhaura Road, P.O.:-Agartala, P.S.:-West Agartala, District:-West Tripura, PIN:-799001.
5. The Under Secretary, Tripura Public Service Commission, Akhaura Road, P.O.:-Agartala, P.S.:-West Agartala, District:-West Tripura, PIN:-799001.
6. Smt. Sthiti Dasgupta, D/O-Lt. Haripada Dasgupta.
7. Sri Ankur Sarkar, S/O-Subodh Sarkar.
8. Smt. Priyanka Bhowmik, D/O-Manindra howmik.
9. Smt. Binita Basfore, D/O- Lt. Rabi Basfore.
10. Sri Debakanta Debbarma, S/O- Astaram Debbarma.
11. Smt. Juthika Naukham, D/O- Mahendra Naukham.

Notice upon Respondent No.6 to 11 to be served through the Respondent No. 2.

.....Respondent(s).

For Petitioner(s)	: Mr. Arijit Bhaumik, Advocate, Mr. S. Dey, Advocate.
For Respondent(s)	: Mr. S.M. Chakraborty, Sr. Advocate, Mr. Debalay Bhattacharya, G.A., Mr. Sankar Bhattacharjee, Advocate, Mr. Raju Datta, Advocate, Mr. Soumyadeep Saha, Advocate, Mrs. P. Chakraborty, Advocate, Mr. Subendu Noatia, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **17th May, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Petitioners in all these writ petitions are aggrieved by their non-selection to the post of Assistant Professor in Government Law College, Tripura. Such exercise was undertaken vide Advertisement No.06/2022 [Annexure-8 to WP(C) No.90 of 2023]. Since the issues of law are common in all the writ petitions, for convenience sake, the relevant material facts and documents being referred to hereinafter are from WP(C) No.90 of 2023 except the distinguishing facts of individual petitioners in the other connected writ petitions as shall be referred to at the relevant places hereinafter. The essential qualifications for appointment to the post of Assistant Professor, Group-A Gazetted, in Government Law College in

Tripura under the Education (Higher) Department, Government of Tripura against the permanent 11 (eleven) vacancies notified in total with breakup of Scheduled Castes (SC), Scheduled Tribes (ST) and Un-reserved (UR) are incorporated in the advertisement. The relevant educational and other qualifications prescribed thereunder are extracted hereinbelow for proper appreciation:

"EDUCATIONAL & OTHER QUALIFICATIONS:

(I) ESSENTIAL QUALIFICATIONS:

Eligibility (A or B):

(A) (i) A Master's Degree with 55% of the marks (or an equivalent grade in a point-scale wherever the grading system is followed) in a concerned/ relevant/ allied subject from an Indian University, or an equivalent degree from an accredited foreign University.

(ii) Besides fulfilling the above qualifications, the candidates must have cleared the National Eligibility Test (NET) conducted by UGC or the CSIR or a similar test accredited by the UGC like SLET/SET or who are or have been awarded a Ph. D degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of M. Phil/Ph. D Degree) Regulations, 2009 or 2016 and their amendments from time to time as the case may be exempted from NET/SLET/SET :

Provided, the candidates, registered for the Ph. D programme prior to July 11, 2009 shall be governed by the provisions of the then existing Ordinances/By Laws/ Regulations of the Institution awarding the degree and such Ph. D candidates shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent position in Universities/ Colleges/

Institutions subjects to the fulfillment of the following conditions:-

- a) The Ph. D degree of the candidate has been awarded in regular mode;
- b) The Ph. D thesis has been evaluated by at least two external examiners;
- c) An open Ph. D viva voce of the candidate has been conducted;
- d) The candidate has published two research papers from his/her Ph. D work, out of which at least one each in a referred journal;
- e) The candidate has presented at least two papers based on his/her Ph. D work in conferences/ seminars/ sponsored/ funded/supported by the UGC/ ICSSR/ CSIR or any similar agency.

The fulfillment of these conditions is to be certified by the Registrar or the Dean (Academic Affairs) of the University concerned.

Note:- NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not required by the UGC, CSIR or similar test accredited by the UGC, like SLET/SET.

सत्यमेव जयते OR

(B) The Ph. D degree has been obtained from a foreign university/institution with a ranking among top 500 in the World University Ranking (at any time) by any one of the followings: (i) Quacquarelli Symonds (QS) (ii) The Times Higher Education (THE) or (iii) the Academic Ranking of World Universities (ARWU) of the Shanghai Jiao Tong University (Shanghai).

(II) RELAXATION ALLOWED

A relaxation of 5% shall be allowed at the Bachelor's as well as the Master's level for the candidates belonging to Scheduled Caste/Scheduled Tribe/ Differently abled { (a) Blindness and low vision; (b) Deaf and Hard of Hearing; (c) Locomotor disability including cerebral palsy, Leprosy cured, dwarfism, acid attack victims and muscular dystrophy; (d) Autism, intellectual disability, specific learning disability and mental illness; (e) Multiple disabilities from amongst persons under (a) to (d) including deaf-blindness } for the purpose of eligibility and assessing good academic record for direct recruitment. The eligibility marks of 55% marks (or an equivalent grade in a point scale wherever the grading system is followed) and the relaxation of 5% to the categories mentioned above are permissible, based only on the qualifying marks without including any grace marks procedure.

A relevant grade which is regarded as equivalents of 55% wherever the grading system is followed by a recognized university at the Master's level shall also be considered valid.

The time taken by candidates to acquire M. Phil and/or Ph. D Degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching positions. Further the period of active service spent on pursuing Research Degree simultaneously with teaching assignment without taking any kind of leave, shall be counted as teaching experience for the purpose of direct recruitment/promotion.

OR

As amended by UGC time to time.

(III) **DESIRABLE:** Knowledge in Bengali or Kok-borok.

Age:- Maximum 40 years of age as on **13.05.2022** Upper Age-limit is relaxable by 5(five) years in case of SC/ST/PH candidates and Government Servants. However, the SC/ST/Govt. Servant will not get the further relaxation of 5(five) years over and above relaxation of 5(five) years which they are already entitled to get as SC/ST candidates.

The last date of submission of online application is 13.05.2022 (upto 5.30 PM). The application (s) received after the closing date will not be entertained.

* Selection procedure: The selection procedure will be governed as per Annexure-A & Annexure-B of the notified scheduled of Assistant Professor, Government Law College in Tripura."

2. Though the advertisement contains Annexure-A and B devising the selection procedure for the notified scheduled post of Assistant Professor in Tripura but surprisingly the writ petitioner has not enclosed the same though they are available in the counter affidavit of the respondent-Tripura Public Service Commission (*hereinafter referred to as TPSC*) and are, indeed, material to determining the controversy at hand. Annexure-A is enclosed in the counter affidavit of TPSC as Annexure-R/4 at page-126 of WP(C) No.90 of 2023, whereas Annexure-B is enclosed in the counter affidavit of TPSC as Annexure-R/6 at page-136 of WP(C) No.1021 of 2022. The relevant part of Annexure-A and B are also extracted hereunder:

ANNEXURE-A

SELECTION PROCEDURE FOR THE POST OF ASSISTANT PROFESSOR, GOVERNMENT LAW COLLEGE AS PER LATEST UGC REGULATION.

1. The overall selection procedure shall incorporate transparent, objective and credible methodology of analysis of the merits and credentials of the applicants based on the weightage given to the performance of the different relevant parameters and his/her performance on a grading system

proforma, based on Appendix-II, Table 3B of the UGC Regulation, 2018 as amended.

2. The Academic score as specified in Annexure-II, Table 3B for Colleges, shall be considered for short-listing of the candidates (Maximum 5 candidates for each post notified) for interview.

3. TPSC shall constitute Selection Committee and fix qualifying cut off mark (if any) for interview as per UGC guideline 2018 as amended time to time.

4. Screening API score followed by selection process of interview with a weightage of 15% and API score weightage of 85% in adherence of New Recruitment Policy, 2018 and UGC Regulation, 2018. Accordingly 15 marks for interview/ personality test is fixed for the post of Asstt. Professor, Government Law College, out of which 1 mark is reserved for assessment of the Desirable qualification i.e. knowledge of Bengali or Kokborok.

5. Merit list will be formed by TPSC aggregating the 85% of marks obtained by the candidate as per API score and interview marks scored by the candidate and following other instructions in the latest UGC guideline.

ANNEXURE-B

Criteria for Short-listing of candidates for Interview for the post of Assistant Professor, Govt. Law College

Sl. No.	Academic Record	Score			
1.	Graduation	80% and above=21	60% to less than 80% =19	55% to less than 60%=16	45% to less than 55%=10
2.	Post-Graduation	80% and above=25	60% to less than 80% =23	55% (50% in case of SC/ST/OBC (non-creamy layer/PWD) to less than 60%=20	
3.	M. Phil	60% and above=07	55% to less than 60%=05		

4.	Ph.D.	25
5.	NET with JRF	10
	NET	08
	SLET/SET	05
6.	Research Publications (2 marks for each research publications published in Peer-Reviewed or UGC-listed Journals)	06
7	Teaching/Post Doctoral Experience (2 marks for one year each)#	10
8	Awards	
	International/National Level (Awards given by International Organizations/Government of India/Government of India recognized National Level Bodies)	03
	State-Level (Awards given by State Government)	02

However, if the period of teaching/post-doctoral experience is less than one year then the marks shall be reduced proportionately.

Note:-(A) (i) M.Phil + Ph.D ---Maximum -25 Marks
(ii) JRF/NET/SET---Maximum -10 Marks
(iii) In awards category-Maximum -03 Marks

(B) Number of candidates to be called for interview shall be decided by the college.

(C) Academic Score-----84
Research Publication-----06
Teaching Experience-----10

TOTAL-----100

(D) SLET/SET score shall be valid for appointment in respective State Universities/Colleges/Institutions only.

3. The petitioner Dr. Jayanta Dhar in WP(C) No.90 of 2023 approached this Court on being aggrieved by his non-selection with the following prayers:-

(i) To award API score for Teaching/Post Doctoral Experience for the service rendered by the petitioner in ICFAI Law College, ICFAI University, Tripura as Assistant Professor (w.e.f. 17.06.2019 to 30.06.2022) and the service rendered after Ph.D. in connection with the Recruitment Process for the post of Assistant Professor under Advertisement No.06/2022 dated 07.03.2022;

(ii) Respondents be asked to show-cause as to why by notification dated 06.09.2022 the Scrutiny Committee introduced a criteria that teaching experience will only in conformity with the Clause 10.0 (a to f) of the UGC Regulations, 2018 be counted towards Teaching/Post Doctoral Experience under Column 7 of Annexure-B to the Advertisement dated 07.03.2022;

(iii) For quashing the notification dated 03.11.2022 and the consequential appointments of the private respondents.

4. Petitioner Dr. Anindita Choudhury in WP(C) No.1021 of 2022 also made similar prayer except that she asked for counting her Teaching/

Post Doctoral Experience in ICFAI Law College, ICFAI University, Tripura as Assistant Professor from 21.07.2017 till date.

5. Petitioner Dr. Amal Debnath in WP(C) No.1022 of 2022 also made a similar prayer except that he asked for counting his Teaching/Post Doctoral Experience as Post Graduate Teacher (Law subject) under the Department of Higher Education, Government of Tripura w.e.f. 04.03.2011 till date under the instant advertisement.

6. As the grounds of challenge raised by the individual writ petitioners are almost identical, so it would be proper to refer to the relevant Clause 10.0 of the UGC Regulations, 2018 as amended which is Annexure-13 to the WP(C) No.90 of 2023 and is extracted hereunder:

"10.0 Counting of Past Services for Direct Recruitment and Promotion under CAS

Previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional organizations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR and DBT, should count for the direct recruitment and promotion under the CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature, provided that:

(a) The essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for

Assistant Professor, Associate Professor and Professor, as the case may be.

(b) The post is/was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer), Associate Professor (Reader) and Professor.

(c) The concerned Assistant Professor, Associate Professor and Professor should possess the same minimum qualifications as prescribed by the UGC for appointment to the post of Assistant Professor, Associate Professor and Professor, as the case may be.

(d) The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of the University/State Government/Central Government/Institutions concerned, for such appointments.

(e) The previous appointment was not as guest lecturer for any duration.

(f) The previous Ad-hoc or Temporary or contractual service (by whatever nomenclature it may be called) shall be counted for direct recruitment and for promotion, provided that:

(i) the essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor, as the case may be;

(ii) the incumbent was appointed on the recommendation of a duly constituted Selection Committee/Selection Committee constituted as per the rules of the respective university;

(iii) the incumbent was drawing total gross emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor, Associate Professor and Professor, as the case may be; and

(g) No distinctions shall be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government), while counting the past service under this clause."

7. Vide notification dated 06.09.2022 issued by the TPSC, the candidates were instructed to go through the Extract of minutes of Scrutiny Committee and submit representation with supporting documents, if there be any to the Commission's secretariat by 15.09.2022. It was further clarified that with regard to Teaching/Post Doctoral Experience (2 marks for each one year), candidates intending to claim such experience will have to submit documents strictly in conformity with the Clause-10.0 (Para-a to f as the case may be) of the UGC Regulations, 2018, failing which their Teaching/Post Doctoral Experience will not be counted.

8. It is the case of the petitioners that the Scrutiny Committee of TPSC has evolved a procedure to count the Teaching Experience of individual candidates which is not provided for under the advertisement nor the UGC Regulations lay down such criteria. Clause 10.0 of the UGC Regulations do not deal with the issue of counting of Teaching Experience rather it deals with counting of past services for direct recruitment and promotion under CAS. The relevant resolution of the Scrutiny Committee

enclosed at Pages-46 to 49 are also extracted hereunder as they are material for dealing with the instant issue:-

"(i) The Teaching Experience** of Higher Education Institution has been considered.

(ii) **If the period of teaching/Post-doctoral experience is less than one year then the marks shall be reduced proportionately.**

(iii) **Other criteria for calculation** of API scores/ Academic Record & Research Performance have been followed as per UGC Regulations-2018 and the API calculation methodology as published in the advertisement.

****Teaching/Post-doctoral Experience in terms of Clause-10.0 of UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION, 2018 relates to Higher Education Institution."**

9. As is evident from the above resolution, the Scrutiny Committee resolved to count Teaching/Post-doctoral experience in terms of Clause-10.0 of the UGC Regulations on minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and measures for the maintenance of standards in Higher Education, 2018 relating to Higher Education Institutions.

10. Petitioner Dr. Jayanta Dhar got 68.20 marks in the UR category as per total marks, i.e. 85% of API + interview, whereas the last recommended UR candidate got total marks of 76.85 (Sl. No.5 of the Recommended List). Petitioner Dr. Anindita Choudhury got 65.66 marks in the same UR category compared to the last recommended candidate who got 76.85 marks. Petitioner Dr. Amal Debnath got 59.06 marks in the same UR category compared to the last recommended candidate who got 76.85 marks. While petitioner Dr. Jayanta Dhar and Dr. Anindita Choudhury claimed for counting their Teaching experience as Assistant Professor in ICFAI Law College, Tripura for the relevant periods, the other petitioner Dr. Amal Debnath claimed for counting his Teaching experience as a Post Graduate Teacher in the Education Department of the Government of Tripura from 04.03.2011.

11. In this background, it is useful to refer to the criteria laid down under the advertisement, in particular Annexure-A and B referred to and quoted supra. As per the essential qualifications prescribed under the Advertisement No.06/2022, a candidate should have Master's Degree with 55% of the marks or an equivalent grade in a point-scale. Besides the above qualification, he should have cleared the National Eligibility Test (NET) conducted by the UGC or the CSIR or a similar test accredited by the UGC

like SLET/SET or who have been awarded a Ph. D degree in accordance with the University Grants Commission (UGC) Regulations of 2009 or 2016 and their amendments from time to time as the case may be exempted from NET/SLET/SET.

12. Mr. Arijit Bhaumik, learned counsel for the petitioners, has also pointed out to the relaxation granted in this criteria under (II), specifically the last paragraph thereof which allows counting of teaching experience for the period of active service spent on pursuing Research Degree simultaneously with teaching assignment without taking any kind of leave. As per the selection procedure prescribed under Annexure-A and B for the notified post of Assistant Professor, the overall selection procedure would be based on a grading system proforma as per Appendix-II, Table-3B of the UGC Regulations, 2018 as amended. The Academic score as specified in Annexure-II, Table 3B for Colleges shall be considered for short-listing of the candidates (maximum 5 candidates for each post notified) for interview. TPSC shall constitute Selection Committee and fix qualifying cut off marks (if any) for interview as per UGC guideline, 2018 as amended time to time. Screening API score followed by selection process of interview with a weightage of 15% and API score weightage of 85% in adherence to New Recruitment Policy, 2018 and UGC Regulation, 2018

shall be followed. Accordingly, 15 marks for interview/personality test is fixed for the post of Assistant Professor, Government Law College, out of which 1 (one) mark is reserved for assessment of the desirable qualification, i.e. knowledge of Bengali or Kokborok. Merit list will be formed by TPSC aggregating the 85% of marks obtained by the candidate as per API score and interview marks scored by the candidate and following other instructions in the latest UGC guideline. Rest of the clauses of Annexure-A prescribe for the constitution of the Selection Committee for the post of Assistant Professor in Colleges. Annexure-B which has been extracted hereinabove as well lays down the criteria for short-listing of candidates for interview for the post of Assistant Professor, Government Law College and in particular, at Clause-7 prescribes 10 marks for Teaching/Post Doctoral Experience (2 marks for each one year).

13. The combined reading of the advertisement along with Annexure-A in particular unerringly points out to the criteria prescribed under UGC Regulations, 2018 as amended from time to time. For counting of Teaching Experience, the Scrutiny Committee referred to Clause-10.0 of the Regulations of 2018 (extracted hereinabove). Clause (f), in particular, deals with the case of the present petitioners as two of them Dr. Jayanta Dhar and Dr. Anindita Choudhury have submitted their applications

claiming Teaching Experience as Assistant Professor in ICFAI Law College, Tripura [which are at page-51, Annexures-12 to WP(C) No.90 of 2023 and at page-49, Annexure-10 to WP(C) No.1021 of 2022 respectively] along with appointment letter dated 14.06.2019 in respect of petitioner Dr. Jayanta Dhar [at page-36, Annexure-7 to WP(C) No.90 of 2023] and appointment letter dated 20.07.2017 in respect of petitioner Dr. Anindita Choudhury [at page-113, Annexure-R/3 to the counter affidavit of TPSC in WP(C) No.1021 of 2022]. Dr. Amal Debnath, the third writ petitioner, has claimed appointment on the basis of being a Post Graduate Teacher under Education Department of the Government of Tripura. The petitioners' contention that Clause-10.0 of the Regulations of 2018 could not have been taken into consideration for counting of Teaching Experience as they relate to counting of past services for direct recruitment and promotion under CAS does not merit acceptance as in the first place the instant advertisement itself relates to appointment through direct recruitment to the post of Assistant Professor and in the second place, petitioners and others claim Teaching Experience on the basis of their service in the concerned University or Law College.

14. Clause (f) of 10.0 lays down three criteria for counting of past services-(i) the essential qualifications of the post held should not be lower

than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor, as the case may be; (ii) the incumbent was appointed on the recommendation of a duly constituted Selection Committee/Selection Committee constituted as per the rules of the respective university; and (iii) the incumbent was drawing total gross emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor, Associate Professor and Professor, as the case may be. While in the case of the petitioners Dr. Jayanta Dhar and Dr. Anindita Choudhury, sub-clauses (ii) and (iii) of Clause (f) of 10.0 do not stand fulfilled, on a bare perusal of their appointment letters as Assistant Professor under the ICFAI University, the petitioner Dr. Amal Debnath was not working as an Assistant Professor rather as a Post Graduate Teacher also on contractual basis. In the case of the first two petitioners, it is apparent from a perusal of their appointment letters that they were appointed on contractual basis and the appointment letters do not indicate as to whether they were appointed on the recommendation of a duly constituted Selection Committee or the total gross emoluments that they were withdrawing were not less than the monthly gross salary of a regularly appointed Assistant Professor. The appointment letter of petitioner Dr. Amal Debnath at Annexure-4 to WP(C)1022/2022 also don't show that such appointment

was made pursuant to the recommendation by a duly constituted Selection Committee in conformity with the Clause (f) of UGC Regulations, 2018. He obtained Ph.D. on 23.07.2019 only. The decision of the Scrutiny Committee to rely upon Clause-10.0 of the Regulations, 2018 has been questioned by the petitioners for counting of Teaching Experience. However, it is not in dispute that on the one hand, the Advertisement No.06/2022 and Annexure-A and B specifically refer to the UGC Regulations of 2018 and that Teaching Experience for computation of API scores could be reckoned only with reference to Clause-10.0 which deals with counting of past services for direct recruitment and promotion under CAS, on the other hand, the procedure evolved by the Scrutiny Committee applies without any discrimination to all candidates. The procedure has not only been uniformly followed but is transparent also. There are no allegations of *mala fides* by any of these writ petitioners against the Scrutiny Committee or any member of the TPSC. The procedure and the criteria for counting of Teaching Experience of all candidates having been applied uniformly, petitioners cannot either make out a claim of arbitrariness in the selection procedure. On this criteria, all candidates whether petitioners or private respondents or other candidates who have not been selected stand on the same footing. As such, this Court is of the considered view that the instant grounds of

challenge to the selection procedure laid down by the TPSC is not amenable to be questioned in writ jurisdiction.

15. It is also not in dispute that the results of the Scrutiny Committee were duly notified and each of these petitioners have duly represented in terms of the Notification dated 06.09.2022 [Annexure-10 to WP(C) No.90 of 2023] and that, a Review Committee had duly examined the representations of all such 25 candidates including these petitioners. These petitioners along with other candidates who were called for interview have also duly put their signatures on the API score before participating in the interview.

16. While the petitioners contend that there cannot be any estoppel in laying down a challenge after having participated in an interview for the reason that the selection procedure was itself vitiated, Mr. Raju Datta, learned counsel for the respondents No.3 to 5-TPSC, Mr. Debalay Bhattacharya, learned Government Advocate appearing for the respondents No.1 & 2-State, and Mr. S.M. Chakraborty, learned senior counsel assisted by Mrs. P. Chakraborty, learned counsel appearing for private respondents No.6 to 8, and Mr. Sankar Bhattacharjee, learned counsel for the private

respondents No.9 to 11, have in a consistent stand opposed the said submission relying upon decisions of the Apex Court.

17. Learned counsel for the petitioners has on the one hand placed reliance upon the decision of the Apex Court in the case of ***Raj Kumar and others vrs. Shakti Raj and others*** reported in **(1997) 9 SCC 527** (Paragraph-16). On the other hand, learned counsel for the TPSC has placed reliance upon a recent decision of the Apex Court in the case of ***Tajvir Singh Sodhi and others vrs. State of Jammu and Kashmir and others*** reported in **2023 SCC OnLine SC 344** (Paragraphs-64 to 69). The Apex Court in the case of ***Raj Kumar and others*** (supra) has at paragraph-16 of the judgment held that since the Government had committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules, the principle of estoppel by conduct or acquiescence shall have no application to the facts in the case.

18. In the case of ***Tajvir Singh Sodhi*** (supra), the Apex Court after dealing with the precedents on the point such as, ***Manish Kumar Shahi vrs. State of Bihar and others*** reported in **(2010) 12 SCC 576**, ***Ramesh***

Chandra Shah and others vrs. Anil Joshi and others reported in (2013) 11 SCC 309, *Ashok Kumar and another vrs. State of Bihar and others* reported in (2017) 4 SCC 357 and other decisions on the point at paragraph-70 of the judgment referred to the case of *Sadananda Halo and others vrs. Momtaz Ali Sheikh and others* reported in (2008) 4 SCC 619 wherein it was observed that the only exception to the rule of waiver is the existence of *mala fides* on the part of the Selection Board. The Apex Court in the said case did not find any *mala fides* or arbitrariness in the selection process and, therefore, held that the said exception could not be invoked. In the present case, as has been observed hereinabove, the petitioners have not alleged any *mala fides* on the members of the Scrutiny Committee or the TPSC in the selection process and this Court has in the foregoing paragraphs held that no discrimination or arbitrariness could be made out in the selection process. Petitioners have consciously participated in the selection exercise being fully aware of the selection procedure followed by the Scrutiny Committee in the computation of score for Teaching Experience and still subjected them to the interview process.

19. One other distinguishing feature on facts which is noted in the present cases is that even if the Teaching Experience of the petitioner Dr. Jayanta Dhar or Dr. Anindita Choudhury for having worked under ICFAI

Law College, Tripura could have been counted, their total API score based on the formula, i.e. 85% of the total API score would not have been above the last recommended candidate in the UR category who scored 76.85 marks. Learned counsel for the petitioners has in this regard referred to the computation of the score by the Scrutiny Committee at Page-47, Annexure-10 to WP(C) No.90 of 2023, where the name of the petitioner Dr. Jayanta Dhar appears at Sl. No.21 with API score out of 100 marks as 72 and that of one Ankur Sarkar at Sl. No.29, a selected candidate, (whose API score is shown as 78) but it has been pointed out by the learned counsel for the TPSC that the computation of the API score for purposes of preparation of the final result would be only 85% of the API score and as such, in the ultimate analysis the petitioners would not have gone higher even if their contention of counting their Teaching Experience as Assistant Professor in ICFAI Law College, Tripura could have been accepted. However, on the main plank of challenge laid by the petitioners, this Court is satisfied that the Scrutiny Committee had not committed any illegality or arbitrariness in following the UGC Regulations, 2018 in the matter of counting of Teaching Experience of the candidates by reference to Clause-10.0 of the Regulations as they squarely apply to counting of such an experience of past services in matters of direct recruitment and promotion under CAS and that the

principle has been applied uniformly without any discrimination to all candidates.

20. Learned counsel for the respondent-TPSC has rightly referred to the decision of the Apex Court in the case of *Tajvir Singh Sodhi* (supra) at paragraphs-64 to 69 of the judgment which lay down the principles of interference by Courts in selection process for public employment. The Apex Court after relying upon the precedents on the point came to the inexorable conclusion that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene. The opinion of the Apex Court at paragraphs-65 to 69 are extracted hereunder as they are illuminating on the issue in controversy raised in the present writ petitions as well:

"65. Before proceeding further, it is necessary to preface our judgment with the view that Courts in India generally avoid interfering in the selection process of public employment, recognising the importance of maintaining the autonomy and integrity of the selection process. The Courts recognise that the process of selection involves a high degree of expertise and discretion and that it is not appropriate for

Courts to substitute their judgment for that of a selection committee. It would be indeed, treading on thin ice for us if we were to venture into reviewing the decision of experts who form a part of a selection board. The law on the scope and extent of judicial review of a selection process and results thereof, may be understood on consideration of the following case law:

i) In *Dalpat Abasaheb Solunke vs. Dr. B.S. Mahajan*, (1990) 1 SCC 305 : AIR 1990 SC 434, this Court clarified the scope of judicial review of a selection process, in the following words:

"9...It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the selection committees and to scrutinise the relative merits of the candidates. Whether the candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection etc....."

ii) In a similar vein, in *Secy. (Health) Deptt. Of Health & F.W. vs. Dr. Anita Puri*, (1996) 6 SCC 282, this Court observed as under as regards the sanctity of a selection process and the grounds on which the results thereof may be interfered with:

"9. ... It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and

safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation.....”

iii) This position was reiterated by this Court in *M. V. Thimmaiah vs. Union Public Service Commission*, (2008) 2 SCC 119, in the following words:

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...

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30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually

amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection. It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions.....”

iv) *Om Prakash Poplai and Rajesh Kumar Maheshwari vs. Delhi Stock Exchange Association Ltd.*, (1994) 2 SCC 117, was a case where an appeal was filed before this Court challenging the selection of members to the Delhi Stock Exchange on the ground that the Selection Committee formed for the aforesaid purpose, arbitrarily favoured some candidates and was thus, against Article 14. This Court rejected the allegation of favouritism and bias by holding as under:

“5. ...the selection of members by the Expert Committee had to be done on the basis of an objective criteria taking into consideration experience, professional qualifications and similar related factors. In the present cases, we find that certain percentage of marks were allocated for each of these factors, namely, educational qualifications, experience, financial background and knowledge of the relevant laws and procedures pertaining to public issues etc. Of the total marks allocated only 20 per cent were reserved for interviews. Therefore, the process of selection by the Expert Committee was not left entirely to the sweet-will of the members of the Committee. The area of play was limited to 20 per cent and having regard to the fact that the members of the Expert Committee comprised of two members nominated by the Central Government it is difficult to accept the contention that they acted in an unreasonable or arbitrary fashion.....”

66. Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the

power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.

67. Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the viva-voce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/ Interview Board should be best left to the members of the committee. In light of the position that a Court cannot sit in appeal against the decision taken pursuant to a reasonably sound selection process, the following grounds raised by the writ petitioners, which are based on an attack of subjective criteria employed by the selection board/interview panel in assessing the suitability of candidates, namely, (i) that the candidates who had done their post-graduation had been awarded 10 marks and in the viva-voce, such PG candidates had been granted either 18 marks or 20 marks out of 20. (ii) that although the writ petitioners had performed exceptionally well in the interview, the authorities had acted in an arbitrary manner while carrying out the selection process, would not hold any water.

68. The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the Advertisement Notice dated 5th May, 2008 was recast vide a corrigendum dated 12th June, 2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:

i) In *Manish Kumar Shahi vs. State of Bihar*, (2010) 12 SCC 576, this Court authoritatively declared that having participated in a selection process without any protest, it

would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.

ii) In *Ramesh Chandra Shah vs. Anil Joshi*, (2013) 11 SCC 309, an advertisement was issued inviting applications for appointment for the post of physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were *ultra vires* the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, this Court did not entertain the challenge for the reason that the same would not be maintainable after participation in the selection process. The pertinent observations of this Court are as under:

“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

iii) Similarly, in *Ashok Kumar vs. State of Bihar*, (2017) 4 SCC 357, a process was initiated for promotion to Class-III posts from amongst Class-IV employees of a civil court. In the said case, the selection was to be made on the basis of a written test and interview, for which 85% and 15% marks were earmarked respectively as per norms. Out of 27 (twenty-seven) candidates who appeared in the written examination, 14 (fourteen) qualified. They were interviewed. The committee selected candidates on the basis of merit and prepared a list. The High Court declined to approve the Select

List on the ground that the ratio of full marks for the written examination and the interview ought to have been 90:10 and 45 ought to be the qualifying marks in the written examination. A fresh process followed comprising of a written examination (full marks - 90 and qualifying marks - 45) and an interview (carrying 10 marks). On the basis of the performance of the candidates, results were declared and 6 (six) persons were appointed on Class-III posts. It was thereafter that the appellants along with 4 (four) other unsuccessful candidates filed a writ petition before the High Court challenging the order of the High Court on the administrative side declining to approve the initial Select List. The primary ground was that the appointment process was vitiated, since under the relevant rules, the written test was required to carry 85 marks and the interview 15 marks. This Court dismissed the appeals on the grounds that the appellants were clearly put on notice when the fresh selection process took place that the written examination would carry 90 marks and the interview 10 marks. The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:

"13. The law on the subject has been crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar (2007) 8 SCC 100, this Court held

that: "18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See also *Munindra Kumar v. Rajiv Govil* (1991) 3 SCC 368 and *Rashmi Mishra v. M.P. Public Service Commission* (2006) 12 SCC 724)".

69. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence."

21. Learned counsel for the petitioners has referred to two decisions rendered by Division Bench of this Court at Annexures-14 and 16 to WP(C) No.90 of 2023. The decision in the case of *Tripura Public Service Commission vrs. Partha Sarathi Dutta and another* in Writ Appeal Nos.9 & 10 of 2008 vide judgment dated 04.06.2008 [Annexure-16 to WP(C) No.90 of 2023] has also been taken note of by the Division Bench of

this Court in the case of *Sri Bimal Kumar Chanda vrs. Dr. Ratna Roy and others* in WP(C)(PIL) No.12 of 2014 vide judgment dated 10.12.2014 [Annexure-14 to WP(C) No.90 of 2023]. The proposition which has been relied upon by the petitioners at paragraph-8 of the decision in the case of *Bimal Kumar Chanda* (supra) is to the effect that the rule in question did not lay down that the teaching experience had to be as a whole time teacher or as a regularly appointed teacher. All it stated that there should be teaching experience of ten years. When the rule making authority framed the rule, it is for it to use the language which it chooses. If the language is amenable to two interpretations, then the more liberal interpretation will have to be given and, therefore, the Court was clearly of the view that the teaching experience as a part-time teacher had to be counted towards total teaching experience. The observations of this Court in the case of *Bimal Kumar Chanda* (supra) do not fit in the facts of the present case where the recruitment was being held under an advertisement which prescribed application of UGC Regulations, 2018 as amended at Clause-10.0 which clearly laid down the principles on which the past services could be counted for direct recruitment and promotion under CAS. The cases of the present petitioners, therefore, stand on a different footing compared to the case of *Bimal Kumar Chanda* (supra) cited by the petitioners.

22. Learned counsel for the TPSC has, on the other hand, placed reliance upon two decisions of the Coordinate Bench of this Court, i.e. WP(C) No.190 of 2023 [*Dr. Sandip Saha vrs. The State of Tripura and 4 others*, judgment dated 03.04.2023] and WP(C) No.950 of 2022 [*Sri Kanu Nath vrs. The State of Tripura and 2 others*, order dated 10.11.2022] where, according to him, the same principles under the same Advertisement No.06/2022 so far as the application of Clause-10.0 of the UGC Regulations, 2018 were in question and have been approved by the learned Single Bench of this Court. It is informed that one of the decisions, i.e. WP(C) No.190 of 2023 has been subject to challenge in a writ appeal which is pending.

23. Mr. Debalay Bhattacharya, learned Government Advocate appearing for the respondents-State and Mr. S.M. Chakraborty, learned senior counsel assisted by Mrs. P. Chakraborty, learned counsel appearing for the private respondents No.6 to 8, both have adopted the submission of learned counsel for the TPSC, the Body which has conducted the recruitment exercise. Learned Government Advocate has referred to the prayers made by the writ petitioners and the nature of representations made by them after result of the Scrutiny Committee and submitted that the case

made out by the petitioners at this stage before the Writ Court is a novation as the petitioners had duly accepted the selection procedure and subjected themselves to the interview. They have turned around to challenge the selection procedure only after they have failed which should not be countenanced in law.

24. Learned counsel for the private respondents have also submitted that the API scores in respect of the petitioners or the private respondents have been computed on the same yardsticks and all these candidates had signed on the score before participating in the interview. Therefore, the petitioners are estopped from laying down a challenge to the selection procedure after they have failed. There is no infirmity in the selection procedure.

25. I have considered the submissions of learned counsel for the parties at length and taken into note the relevant pleadings placed from the record. I have also taken note of decisions cited by the parties on the propositions urged by them. As a result of the discussions made hereinabove and the reasons recorded, this Court is of the considered view that the petitioners have failed to make out any grounds of illegality, discrimination or arbitrariness in the procedure adopted by the TPSC and the Scrutiny

Committee in computation of the scores of Teaching Experience for the purposes of selection of the candidates. These petitioners having consciously participated in the exercise have laid challenge to the selection procedure only after they have failed to qualify. Petitioners have not alleged any *mala fides* in the selection procedure and no arbitrariness or discrimination have been made out on their part.

26. Therefore, in the totality of facts and circumstances and for the reasons recorded hereinabove, this Court does not find any merit in these writ petitions which are accordingly dismissed.

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

(APARESH KUMAR SINGH), CJ

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