

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.114/2023

Shri Pritam Saha, son of Sri Narayan Chandra Saha, aged about 36 years, resident of Geet Bharati Para, P.O. R.K. Pur-799120, Sub-Division-Udaipur, P.S. R.K. Pur, District-Gomati, Tripura.

..... Petitioner(s).

V E R S U S

1. Tripura Gramin Bank, (A Government Undertaking), Abhoynagar, P.O. Abhoynagar-799005, Sub-Division-Agartala, District-West Tripura, represented by its Chairman, having his office at Tripura Gramin Bank, Head office at Abhoynagar, P.O. Abhoynagar-799005, Sub-Division-Agartala, District-West Tripura.

2. The Chairman, Tripura Gramin Bank (A Government Undertaking), Head office at Abhoynagar, P.O. Abhoynagar-799005, Sub-Division-Agartala, District-West Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. Sankar Lodh, Advocate.

For Respondent(s) : Mr. Prabir Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

22/06/2023

Heard Mr. Sankar Lodh, learned counsel appearing for the petitioner and Mr. Prabir Saha, learned counsel appearing for the respondents-Bank.

2. The petitioner herein has come for a limited relief for shifting the date of promotion from 23.03.2021 to 25.03.2020 when two other candidates who were from the normal channel were granted promotion under the same advertisement dated 11.12.2019 against the 2(two) posts out

of 4(four) earmarked for normal channel. Petitioner and one Abhishek Majumder had earlier approached the Writ Court in the first round of litigation in WP(C) No.28 of 2020 and WP(C) No.27 of 2020 respectively challenging the letters dated 30.12.2019 and 04.12.2019 whereunder their applications for participating in the same promotional exercise against the two first track channel posts out of four were declined by the management on the ground that they belong to specialized sector. During pendency of the writ petitions, the respondent-management was directed to accept the applications of the petitioners for promotion of the post in question, permit them to undertake written examination as well as confer oral interview if they pass the written examination. However, it was indicated that their final result shall not be published without further orders from the Court. It was also indicated that the interim measures as granted vide order dated 10.01.2020 shall not result in any equity in favour of the petitioners. The petitioners finally succeeded in their challenge by the judgment rendered on 07.10.2020, the operative portion of which is quoted hereunder:

"[24] In the result, the impugned communications dated 4th December, 2019 and 30th December, 2019 in both the petitions are set aside. The petitioners are held eligible for being considered for promotion in fast track channel to the post of Officer Middle Management (Scale-III) for which their tests are already conducted. The respondents shall now proceed to declare the result of the examination and will be at liberty to grant promotions to the selected candidates.

Both petitions are allowed in above terms and disposed of accordingly. Pending application(s), if any, also stands disposed of."

3. Meanwhile, the Bank had published the result of the two candidates found successful against the normal channel who were promoted vide notification dated 25.03.2020 during pendency of the writ petitions. The Bank being dissatisfied by the judgment of the learned Single Judge carried it in appeal in Writ Appeal No.30 of 2021 and Writ Appeal No.28 of 2021 respectively in the case of the present petitioner and the other writ petitioner Abhishek Majumder. However, having lost in appeal vide judgment dated 11.02.2021, the respondents declared the result on 23.03.2021 granting promotion to the petitioner to the post of Senior Manager (MMG Scale-III) from their original feeder post of Manager (MMG Scale-II). Since the delay in the publication of result because of the pendency of litigation caused the delay in the notification of promotion of the petitioner, petitioner approached this Court in the present writ petition seeking shifting of the date of promotion to 25.03.2020 when the other two candidates from the normal channel were promoted. It is the case of the petitioner that the petitioners were compelled to approach this Court in the first round of litigation on account of an arbitrary and illegal stand of the respondent-management contained in letters dated 30.12.2019 and 04.12.2019 which did not survive the test of judicial scrutiny and were set

aside. This judgment of the learned Writ Court was upheld in appeal. The litigation journey forced upon the petitioner by the management should, therefore, not come into the way of their promotion from the due date when other two candidates from the normal channel were promoted. Petitioner should not be made to suffer on account of fault of the respondent-management.

4. The stand of the respondents has been contested by the Bank by filing a counter affidavit. Mr. Prabir Saha, learned counsel for the respondents-Bank, submits that since the learned Writ Court had put an embargo on the declaration of result and it was only after the final judgment rendered by the Writ Court on 07.10.2020 and after having lost in appeal in W.A. No.30 of 2021 and W.A. No.28 of 2021 that the results were published, the Bank was justified in notifying the promotion immediately thereafter on 23.03.2021. The judgment of the learned Writ Court had not specifically indicated any date from which the promotion is to be given. The appellate Court had also not indicated any effective date of promotion of the two petitioners therein. As such, the Bank is not at fault.

5. I have considered the submissions of learned counsel for the parties. The attendant facts are borne out from the preceding paragraphs and have been dealt with in the judgment rendered by the Writ Court earlier in the case of the two petitioners including the present one on 07.10.2020.

Under the same recruitment exercise, both the two candidates who were finally promoted on 25.03.2020 and the present petitioner participated in a common test in view of the interim order dated 10.01.2020 passed by the Writ Court earlier. However, the interim order was conditional that the final results were not to be published without further orders from the Court. Since the two candidates from the normal channel got promoted on 25.03.2020 as there was no litigation as respects their claim, the present petitioner should not be made to suffer on account of having been forced to agitate his grievances before this Court on issuance of the impugned letters dated 04.12.2019 in respect of the present petitioner and letter dated 30.12.2019 in the case of the other writ petitioner namely Abhishek Majumder. Since the petitioner succeeded in the challenge both before the Writ Court and in appeal, the fruits of the promotional exercise should not be delayed due to the litigation journey. The litigation was forced upon the writ petitioner on account of issuance of the offending letter dated 04.12.2019 which the learned Writ Court after comprehensive discussion was pleased to set aside. Though there was an embargo upon the declaration of result pursuant to the interim order passed by the Writ Court on 10.01.2020 but since the writ petition was finally allowed and upheld in appeal, the results were declared later on. In such a situation, the Bank should have granted him promotion at least notionally effective from the date from which the other two candidates from normal channel were granted promotion. Such an approach would both

stand the test of reasonableness and fairness. Delay in the litigation journey on account of the fault of the Bank would otherwise entail loss of seniority to the petitioner. However, since the petitioner had not actually worked on the promotional post prior to 23.03.2021 when he was actually promoted, he would not be entitled to any salary for the said period. The effective date of his promotion, however, should relate back to 25.03.2020 for the purposes of seniority and tenure in the post of Senior Manager (MMG Scale-III).

6. With these observations and directions, the writ petition is disposed of. Respondents-Bank shall issue the consequential corrigendum shifting the date of promotion of the petitioner from 23.03.2021 to 25.03.2020 within a period of six weeks from the date of receipt of copy of this order.

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

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.06.27
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