

**HIGH COURT OF TRIPURA
AGARTALA
WP(C)No.131 of 2020**

Sri Jiban Krishna Saha

.....Petitioner(s)

Versus

The State of Tripura and Others

.....Respondent(s)

For Petitioner(s)	:	Mr. S. Lodh, Adv. Mr. G.S. Bhattacharjee, Adv.
For Respondent(s)	:	Mr. D. Bhattacharya, G.A. Mr. S.M. Chakraborty, Sr. Adv. Mr. R. Datta, Adv. Ms. P. Chakraborty, Adv.

Date of Hearing and Judgment & Order	:	01.03.2023
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**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment & Order(Oral)

Chief Justice, Acting

Heard Mr. S. Lodh, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharya, learned G.A. appearing for the respondents No.1 and 2, Mr. R. Datta, learned counsel appearing for the respondents No.3 to 6 and Mr. S.M. Chakraborty, learned senior counsel appearing for the respondents No.7, 13, 15 to 20, 22, 23, 25 to 31, 33 to 37, 40 to 42, 44 to 56 and 58 to 64. Accordingly, notices are duly served upon the above mentioned respondents. There is no representation for the remaining respondents. In so far as the respondents No.43 and 57 are concerned this court by way of an order dated 13.12.2022 allowed the petitioner to place on record two

newspapers with regard to the steps taken for publication of the notification through substituted service as proof of service. Now, in presence of the counsel, this matter is taken up for hearing.

2. This is the second round of litigation. Earlier the petitioner had approached the Hon'ble High Court being WP(C)No.310 of 2015 challenging the recruitment rules for the post of Headmaster/Headmistress, Higher Secondary Schools/District Inspector Schools and also for the selection process and appointment to the post of Assistant Headmaster/Assistant Head Mistress, Higher Secondary Schools and Headmaster/Headmistress of High Schools/Inspector of Schools of the private respondents not having B.Ed. Degree, and herein six months certificate courses like B.T/CETE/T.Ed, had been given same status as B.Ed. Degree and had been arbitrarily treated said certificate courses at par with the B.Ed which is a two years degree course which is done by the state respondents arbitrarily and violating the National Council for Teacher Education(Determination of Qualifications for Recruitment of Teachers) Regulations, 2001 and proceeded for the appointment to the post of Headmaster/Headmistress, High Schools/District Inspector of Schools and also for appointment to the post of Assistant Headmaster/Assistant Headmistress, Higher Secondary Schools, and Headmaster/Headmistress of High Schools/Inspector of Schools through the TPSC equating the B.Ed. Degree with the certificate courses like B.T./CETE/T.Ed, vide advertisement No.01 of 31.12.2013 issued by the TPSC and the private respondents were recommended for the appointment who are not having the B.Ed. degree. The said recommendation and subsequently the appointments thereof by the

respondents are completely arbitrary, illegal and are not tenable in law. On 04.09.2019 was disposed directing the petitioner to approach the respondent-State, highlighting their grievances both with regard to the framing of rules as also their non-consideration of appointment through the selection process already undertaken. Two issues with regard to rules and another with regard to selection process.

3. According to the petitioner as per direction of the court the petitioner have highlighted their grievances to the respondent-State, but the respondent-State have not stated anything in the order dated 04.12.2019. During the course of argument Mr. Lodh, learned counsel appearing for the petitioner has referred to para-6 of the order dated 04.12.2019 where it has been stated as follows :

"6. Sri Jiban Krishna Saha, PGT was accordingly heard. He has reiterated the following issues mentioned in his written representation :

(a) The eligibility criteria mentioned in the advertisement issued by the TPSC bearing No.01 of 2014 dated 31.12.2013, requires Masters Degree with at least 45% marks in B.T./B.Ed./T-Ed(6 months Course) for the post of Head Master, Higher Secondary/District Inspector of Schools. This is as per Recruitment Rules, 2006. Thus, B.Ed. Course which is for 2(two) years has been equated with 6(six) months certificate of T-Ed and CETE. Moreover, CETE is a certificate course for elementary level teachers.

(b) The National Council for Teachers Education (NCTE) (Determination of Minimum Qualifications for Recruitment of Teachers) Regulations, 2001, lays down that at the secondary level the minimum qualification required is B-Ed or 4(four) years Integrated or a qualification course. At the Senior secondary level/Higher Secondary level the minimum qualification required is Master's Degree with B.Ed. or 2(two) years integrated M.Sc.Ed or equivalent course. Thus, making B.Ed and essential qualification for recruitment teachers Board at Secondary and Higher Secondary level.

(c) Further, as per the notification dated 3rd September, 2001, it has been provided that even for appointment for teachers at primary level basic teacher training programme of 2(two) years duration is required and B.Ed. is not a substitute for basic teachers training programme. Thus, recruitment of

teachers at Secondary and Higher Secondary level with 6(six) months training is completely illegal and beyond the guidelines issued by NCTE vide notification dated 3rd September, 2001. Further the notification dated 3rd September, 2001 provides that the states having basic teachers training courses of less than 2(two) years duration may by 2005 conduct basic teachers training of 2(two) years within 2005. Further as per clause 4 of the notification dated, 3rd September, 2001, it has been provided that the existing rule of the States may be modified within a period of 3(three) years so, as to bring conformity with the qualifications laid down by NCTE. But the recruitment rules which has been framed by the State for the post of Headmaster/Headmistress Higher Secondary Schools/District Inspector of Schools vide notification dated 31.10.2006 are not in conformity with the NCTE notification dated 3rd September, 2001.

(d) The NCTE has also issued fresh guidelines on 12.11.2014 and as per the said guidelines also B-Ed is the minimum qualification required for recruitment for teachers at both secondary and higher secondary level."

He has further stated that the Director of Secondary Education recorded the grievances. According to the petitioner, the underlined portion of sub-para-c and sub-para-d of para 6 not considered.

4. The Director of Secondary Education only stated in their order that the petitioner have secured only 109 marks whereas the last selected candidate has secured 113.5. So, the petitioner cannot be selected. The grievance of the petitioner is that if the present petitioner cannot get selection than the private respondents also cannot get the appointment because they are also not eligible.

5. The grievance of the petitioner is that the representation of the petitioner have been rejected on the ground that TPSC through due process prepared the select list among the candidates whose qualification is in conformity with the impugned recruitment rules, but silent about the recruitment rules which is against the NCTE Regulation, 2001 and affirmed the appointment of the private respondents who were not having the B.Ed. degree,

but recommended by the TPSC, though it is admitted by the authority that the recruitment rules is bad in law and illegally framed by the Government but as the petitioner though have the qualification of the B.Ed. degree and other requisite qualifications but not been recommended by the TPSC, he cannot be considered for the appointment to the posts.

6. Mr. D. Bhattacharjee, learned G.A. appearing for the respondents No.1 and 2 during the course of his argument has referred to a judgment of the apex Court in **D. Sarojakumari versus R. Helen Thilakom and Others** reported in **(2017) 9 SCC 478**. He has referred to paras-4 to 12 of the judgment which reads as under :

"4. The main ground urged on behalf of the appellant is that Respondent No.1 having taken part in the selection process could not be permitted to challenge the same after she was unsuccessful in getting selected. The law is well settled that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.

5. In **Dr. G. Sarna vs. University of Lucknow & Ors. : (1976) 3 SCC 585** the petitioner after appearing in the interview for the post of Professor and having not been selected pleaded that the experts were biased. This Court did not permit the petitioner to raise this issue and held as follows :-

"15. We do not, however, consider it necessary in the present case to get into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection (1976) 3 SCC 585 Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee....."

6. In **Madan Lal & Ors. vs. State of J&K & Ors.: (1995) 3 SCC 486**, the petitioner laid challenge to the manner and method of conducting viva-voce test after they had appeared in the same and were unsuccessful. This Court held as follows :-

"9.....Thus the petitioners took a chance to get themselves selected at the said oral interview.

Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted....."

7. In **Manish Kumar Shahi vs. State of Bihar** : (2010) 12 SCC 576 , this Court held as follows :-

"16.....Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name (1995) 3 SCC 486 (2010) 12 SCC 576 does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

8. In the case of **Ramesh Chandra Shah and others vs. Anil Joshi and others** : (2013) 11 SCC 309 the petitioners took part in the process of selection made under the general Rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an objection. This Court held as follows :-

"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 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."

9. Same view has been taken in **Madras Institute of Development Studies and Another vs. Dr. K. Sivasubramaniyan and others** : (2016) 1 SCC 454.

10. The Kerala High Court did not note the above mentioned judgments and ignored the well settled position of law in rejecting the specific plea raised by the appellant herein that the appellant could not raise the issue that no direct recruitment should have been conducted once she had applied for and taken part in the selection process by direct recruitment.

11. As far as the present case is concerned an advertisement was issued by Respondent No.6 inviting applications for the post of Music Teacher in Samuel LMS High School. Respondent No.1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. The reasoning of the learned Single Judge in rejecting the objection is not in consonance with the law laid down by this Court. In view of this we need not go into the other issues raised.

12. We, therefore, allow these appeals and set aside order dated 25.07.2003 of the learned Single Judge and dismiss the writ petition O.P.No.36563 of 2002 as being not maintainable."

Having heard the counsel for the parties, this court does not find any merit in the present writ petition and accordingly, the same stands dismissed. The petitioner is at liberty to avail remedies under law if any against the impugned orders.

JUDGE

CHIEF JUSTICE (ACTING)

