

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.190 of 2023

Dr. Sandip Saha

....Petitioner(s)

Versus

The State of Tripura and 4 Ors.

....Respondent(s)

For the Petitioner(s)	:	Mr. S. Bhattacharjee, Advocate
For the Respondent(s)	:	Mr. Raju Datta, Advocate
		Mr. D. Sarma, Addl. GA

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment and Order (Oral)

03/04/2023

By means of filing the present writ petition, the petitioner has challenged the selection of respondent no.5 in the post of Assistant Professor(UR) in Physical Education.

2. Heard Mr. S. Bhattacharjee, learned counsel appearing for the petitioner. Also heard Mr. Raju Datta, learned counsel appearing for respondents-TPSC and Mr. D. Sarma, learned Addl. GA appearing for respondents-State.

3. Having taken into consideration the submission of Mr. Bhattacharjee, learned counsel for the petitioner, it is clear that the petitioner substantially challenged the methodology adopted by the Selection Committee. Learned counsel for the petitioner has submitted that API marks of the petitioner if added, then, the petitioner would have been selected.

4. Learned counsel for the petitioner has relied on the corrigendum dated 13.10.2022 which was issued in pursuance of notification dated 16.01.2021 issued by the Tripura Public Service Commission (for short, TPSC) wherein the prescribed methodology is as under:

“100% by direct recruitment through TPSC.

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 further modification in 2020 and UGC Regulation, 2018”. (Annexure-2 to the writ petition).

It is the contention of the petitioner that if 15 percent marks is added with his API score, then, his API score would be 83.

5. In response to the aforesaid submissions advanced by learned counsel appearing for the petitioner, Mr. Datta, learned counsel for the respondents-TPSC would contend that out of total 100 marks 85 percent i.e. 85 marks are meant for awarding API score which include the weightage mark of 15 percent as per notification dated 13.10.2022 (Annexure-2 to the writ petition) and the balance 15 percent i.e. 15 marks out of 100 is kept for interview.

6. Mr. Datta, learned counsel has placed before this Court the overall merit list of the candidates, which may be reproduced here-in-below, for convenience:

Sl No.	Name of candidate	Father's Name	Category	Roll No	API	85% of API Score	Marks obtained in Interview (Out of 15)	Total Marks obtained (Out of 100)	Remarks/Age
1.	DR. ADITYA KUMAR DAS	LT SUKUMAR DAS	UR	PHY_EDU -082201	81.00	68.85	13	81.85	Recommended
2.	SANDIP SAHA	SUBHASH CHANDRA SAHA	UR	PHY_EDU -082215	83.00	70.55	10	80.55	Wait List 38-07-24
3.	JITENDRA SINGH	KALI PRASAD SINGH	UR	PHY_EDU -082204	83.00	70.55	10	80.55	32-09-29
4.	MOHAMMAD GULAM SABIR	MOHAMMAD MUSTAFA	UR	PHY_EDU -082207	81.00	68.85	9	77.85	

5.	MANAS DAS	DHIRENDRA KUMAR DAS	SC	PHY_EDU -082206	70.00	59.50	7	66.50	Recommended
6.	PRALOY KANTI SARKAR	SRI NITAI LAL SARKAR	SC	PHY_EDU -082210	57.00	48.45	12	60.45	Wait List
7.	TIPU SARKAR	ARUN SARKAR	SC	PHY_EDU -082214	56.00	47.60	11	58.60	
8.	BECON DEBBARMA	UTTAM KUMAR DEBBARMA	ST	PHY_EDU -082203	50.00	42.50	14	56.50	Recommended
9.	SANJOY SARKAR	HARENDRA CHANDRA SARKAR	SC	PHY_EDU -082212	54.00	45.90	10	55.90	
10.	LALHMANG -AIHSANGA SAILO	BIAKCHUNGUNGA SAILO	ST	PHY_EDU -082205	50.00	42.50	13	55.50	Wait List
11.	BARIS RIANG	BHUSHAN RIANG	ST	PHY_EDU -082202	56.00	47.60	7	54.60	
12.	PARIMAL DEBBARMA	LATE MANGAL DEBBARMA	ST	PHY_EDU -082208	50.00	42.50	7	49.50	

7. In the instant case, the API score of respondent no.5 is 81.00 after adding 15 percent weightage marks. Thereafter, 85% of total API score of 81.00 obtained by respondent no.5 is taken into account and it comes to 68.85.

8. It is further contended that the respondent no.5 obtained 13 marks in interview out of 15 marks and in total he obtained 81.85 marks. The API score of the petitioner is 83.00 after adding 15 percent of the weightage marks.

Accordingly, 85% of the API score, if taken into account then, it comes to 70.55. But, the petitioner obtained 10 marks in interview out of 15 marks and in total he obtained 80.55 (70.55+10).

Since, in total, the respondent no.5 obtained higher marks (81.85) than that of the petitioner, the name of respondent no. 5 has been recommended by the TPSC and the name of the petitioner is placed as wait list candidate at serial no.2.

9. In view of this, in the opinion of this Court, it is settled that *the Court in exercise of its discretionary and extra-ordinary power of judicial review will not enter into the merits of the selection process and not to sit as an appellate authority. The Selection Committee is constituted by the experts on the subject and they are the best persons to evaluate the fittest candidate for a particular post, on which the Court has no such expertise. When all the parameters for selection of a candidate in a particular post are taken into account, then, the Court should usually refrain itself from interfering with such selection and evaluation of the merits of the candidates. The selection of a best possible candidate is the solemn duty of the Selection Committee and it is absolutely within its domain.*

(emphasis supplied)

10. *Unless it is the established case of bias or favouritism or nepotism, or suffers from patent material irregularities in the constitution of the committee or its procedure vitiates the selection that offends Article 14 and Article 16 of Constitution of India, the Court will not interfere with the fair exercise done by the Selection Committee in selecting the fittest/best candidates.*

(emphasis supplied)

11. In this context, I may gainfully refer to a very recent case, ***Tajvir Singh Sodhi & Ors. vs. The State of Jammu and Kashmir & Ors.*** decided on **28th March, 2023** in ***Civil Appeal Nos.2164-2172 of 2023***, wherein the Hon'ble Supreme Court while dealing with almost a similar and identical question relying its earlier judgments has held thus:

“Selection Process for Public Employment: Interference by Courts:

12. *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, 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.....”

12.1. 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.”

12. In the light of aforesaid settled principles discussed in **Tajvir Singh Sodhi**(*supra*), if the present case is considered, then, it comes to light that the petitioner herein neither has alleged any bias or favouritism or mala fide against the members of the Selection Committee nor has alleged any material irregularity in the constitution of the Selection Committee.

13. This Court does not find any procedural defects in the methodology adopted by the Selection Committee in selecting the best candidate i.e. respondent no.5 in the post of Assistant Professor (Physical Education). The Selection Committee recommended the name of respondent no.5 as he obtained more marks than that of the petitioner.

14. In the light of above observation and discussions, the present writ petition is dismissed being devoid of merit. However, there shall be no order as to costs.

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

JUDGE

Snigdha



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