

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.351/2022

Sri Somen Baidya, S/O. Sri Ratan Lal Baidya, R/O. Vill. & P.O. Kashari,
P.S.- P.R Bari, District- South Tripura, PIN-799150, age about-37 years.

..... Petitioner(s).

V E R S U S

1. The State of Tripura, represented by its Principal Secretary to the Department of Health and Family Welfare, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura, PIN-799006.

2. The Director, Directorate of Health Services, Government of Tripura, P.O.-Agartala, P.S. West Agartala, District-West Tripura, PIN-799001.

3. The Principal Secretary, Finance Department, Govt. of Tripura, P.O.-Kunjaban, P.S.-New Capital Complex, District-West Tripura, PIN-799006.

4. The L.R. & Secretary, Law Department, Govt. of Tripura, P.O.-Kunjaban, P.S.-New Capital Complex, District-West Tripura, PIN-799006.

.....Respondent(s).

For Petitioner(s) : Mr. Arijit Bhaumik, Advocate,
Mr. S. Dey, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharya, G.A.,
Mr. Soumyadeep Saha, Advocate,
Ms. N.C. Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

23/06/2023

Heard Mr. Arijit Bhaumik, learned counsel appearing for the petitioner and Mr. Debalay Bhattacharya, learned Government Advocate assisted by Mr .Soumyadeep Saha, learned counsel appearing for the respondents-State.

2. This is the second round of litigation by the petitioner for appointment to the post of Pharmacist (ALLO) under the Health & Family Welfare Department, Government of Tripura conducted under the advertisement published on 01.11.2013 and 02.11.2013. In total, 73 posts were notified out of which 47 were recommended vide Annexure-1 page-20 by the Interview Board. Petitioner participated in the walk-in-interview and got 9(nine) marks. Since, petitioner's name was not recommended, he approached the Court in the previous writ petition bearing WP(C) No.99 of 2015. The case was decided on 10.02.2020 in the following manner:

"[4] Having carefully scrutinized the records as produced before this court, this court finds that the respondents No.1 & 2 had made attempt to invoke the doctrine of estoppel by conduct against the petitioner as after his participation in the selection process when he found himself out of the fray, he has challenged the very process itself by which he sought to achieve the selection. In this regard, however, Mr. Bhattacharjee, learned GA referred a decision of the Calcutta High Court in **State of West Bengal & Others vs. Chandra Kanta Ganguli** [judgment dated 26.04.2017 delivered in MAT 949 of 2016 & Ors.] where the Calcutta High Court has observed that where there is no allegation of any bias or favouritism, the recruitment process cannot be set aside on some technical flaws, here and there. It is an uphill task on the part of the selection committee to interview huge number of candidates on a single day and prepare the merit panel. The method which is to be selected for getting the best candidates out of the basket depends on the nature of job attached to the post. Therefore, Mr. Bhattacharjee, learned G.A. has indicated that the selection on

the maximum mark of 20 cannot be questioned by the petitioner inasmuch as there is no specific allegation of bias, mala-fide or manipulation against the selection committee/board. Even the members of the selection committee are not party in the proceeding. Therefore, against them no allegation can be made, even if there is some allegation as not incorporated in the writ petition. Only the mode has been questioned as there is no such allegation that the said mode is not equivalent for all the candidates. The impossibility of taking interview of huge number of candidates cannot be a ground for challenging the selection process inasmuch as in **Sadananda Halo & Ors. vs. Momtaz Ali Sheikh & Ors.**, reported in (2008) 4 SCC 619, it has been observed that the court cannot interfere with the recruitment process mechanically and in a mathematical manner by setting its own benchmark. The apex court has further observed that instead of testing the matter on the basis of the ground realities the court shall take a decision and make the balance before interfering with the selection process. Mr. Bhowmik, learned counsel has submitted that still there is vacancy and the respondents No.1 & 2 may be directed to appoint the petitioner and if necessary to adjust the vacancy when the vacancy might be available from the reserved category, such as Ex-serviceman etc. It is apparent that there is no challenge against the bona fide of the selection process and as such, this court is not inclined to interfere with the selection process but so far the pointed allegation of not having the registration as the Pharmacist by the respondent No.10 is concerned, this court is of the view that in absence of the registration as the Pharmacist, no Pharmacist [Allo] can be appointed inasmuch he will otherwise stand prohibited from dispensing the medicine to the patient for which he was being observed to find his suitability to be appointed as the Pharmacist [Allo]. Be that as it may, it has not been denied that the respondent No.10 had the essential qualifications of getting the registration as the Pharmacist under the State Pharmacy Council. It is a mere formality to register someone. Without taking a hyper technical view of the matter, this court is of the

view that since already the respondent No.10 has been granted the registration as the Pharmacist [Allopathy], his service may not be disturbed. That apart, the respondent No.10 has got 12 out of 20. The petitioner had got 9 out of 20. This court does not have the jurisdiction in the background fact to verify the process of the selection committee and as stated earlier, there is no challenge in respect of fairness or integrity of the selection process. Further, there is no allegation of mala fide against the members of the selection committee. But it appears that the petitioner is a suitable candidate. Therefore, the respondents No.1 & 2 may consider on the appointment of the petitioner against the vacancy, if any available, and if required by adjustment. Result of such consideration be communicated to the petitioner within a period of 3 months from today. The observation as made on the basis of the records of the interview as conducted by the respondents No.1 & 2 is fair consideration and the consequential action.

With this observation and direction, this writ petition stands disposed of.

There shall be no order as to costs."

3. Petitioner was communicated by letter dated 07.12.2020 issued by the Director of Health Services, Government of Tripura that there is no scope to consider the matter of his appointment for the post of Pharmacist (ALLO). Being aggrieved, he has approached this Court again.

4. Mr. Arijit Bhaumik, learned counsel for the petitioner, has urged a number of grounds in support of the reliefs prayed for, i.e. (a) asking the respondents to show-cause as to why he shall not be appointed on the post of Pharmacist (ALLO) on the basis of the walk-in-interview held on

18.11.2013 and 19.11.2013; and (b) as to why the communication dated 07.12.2020 by which his claim was denied be not set aside.

5. Learned counsel for the petitioner has drawn the attention of the Court to the notings obtained under RTI under Annexure-7 whereunder at one stage on 01.06.2020, the matter was recommended for approval of the Council of Ministers. However, later on, the Law Department raised objections which are contained in the notings dated 13.11.2020 at page-72/73 of the writ petition. Learned counsel for the petitioner submits that the Writ Court had found the petitioner suitable and also directed the respondents No.1 and 2 to consider his appointment against the vacancy, if any, available and if required by adjustment. Though respondents have taken a plea in the counter affidavit that between 9 and 12 marks, there were 91 candidates and many having more marks than the petitioner but since other candidates either did not agitate their claim or the panel had lost its force after one year since it was prepared in 2015, there was no occasion to consider the case of the other candidates as has been opined by the Law Department. As such, the direction of the learned Writ Court has been frustrated on completely untenable grounds. Therefore, respondents should be directed to appoint the petitioner since the vacancies on the post of

Pharmacist (ALLO) exist out of the already notified 73 vacancies and moreover, further vacancies have accrued in between.

6. Mr. Debalay Bhattacharya, learned Government Advocate appearing for the respondents-State, has objected to the submissions relying upon the contents of the counter affidavit. One of the grounds regarding the eligibility of one Protim Kr. Sinha who was appointed as a Pharmacist (ALLO) under the same interview has also been categorically answered at paragraph-14 of the counter affidavit by stating that the said candidate was holding a valid registration under the Tripura State Pharmacy Council at the time of the said walk-in-interview held in the year 2013 and his registration number is A-2175. Therefore, the statements made by the petitioner are baseless and imaginary and denied. However, on the main contention of the petitioner, it has been averred that there are altogether 91 candidates who scored marks between 9 to 12 and petitioner had scored 9 marks only. As such, even considering the number of available vacancies which were discussed in the notings on the file, petitioner did not stand a chance of being appointed ahead of the better candidates. In further support of the aforesaid contention, it is stated that other writ petitions were also filed by 12 other candidates out of whom 5(five) candidates secured more marks than the petitioner but those writ petitions were dismissed. One of those writ

petitioners had approached the appellate Court wherein certain directions were issued regarding apportionment of the total vacancies on the basis of 50% reservation to the reserved category. As such, none of those candidates also succeeded. The department has taken an overall view of the matter and since there were several candidates with more marks than the petitioner between 9 to 12 marks, petitioner cannot stake a legal right or violation of fundamental right to be appointed on the post of Pharmacist (ALLO) despite the observations of the Writ Court on the previous occasion that he was a suitable candidate.

7. I have considered the submissions of learned counsel for the parties, the relevant facts and materials placed from the records and taken note above which pose the only question whether the petitioner was eligible and fit to be appointed on the post of Pharmacist (ALLO) on the basis of the 9(nine) marks secured by him in the walk-in-interview held in November, 2013. It appears that the case of the writ petitioner was decided on 10.02.2020. Though the life of a panel ordinarily remains for one year or otherwise as per the rules prescribed but since the cause of action had been raised in 2015 and the decision of the Writ Court came in February, 2020, relief could not have been denied only on the ground of lapse of panel beyond the expiry of one year. However, in order to consider the case of the

petitioner, the respondents were obliged to take into consideration the comparative merit of the candidates in that panel and the number of vacancies available for appointment to the suitable candidates. As it appears, petitioner got 9 marks whereas between 9 to 12 marks there were 91 candidates. As such, petitioner's claim could not be better off than the candidates who were above in the panel on the basis of the higher marks obtained by them. It is not a case that any person having lower marks than the petitioner has been appointed by the respondents making out a case of discrimination and violation of right to equality under Article 14 of the Constitution of India. Petitioner as such cannot claim a legal right to be appointed only on the existence of certain vacancies out of the notified vacancies or that have accrued thereafter if no candidate having lesser marks than him has been appointed by the respondents. The contention of the petitioner regarding the appointment of one Protim Kr. Sinha has been adequately answered by the respondents in their counter affidavit to justify his appointment on the ground that he was holding a valid registration under the Tripura State Pharmacy Council.

8. Be that as it may, on a comprehensive and overall consideration of the contentions raised by the writ petitioner, this Court is of the view that petitioner has not been able to make out a case of violation of

any fundamental or legal right to be conferred the appointment of Pharmacist (ALLO) on the basis of the marks obtained by him during the walk-in-interview under the advertisement published on 01.11.2013 and 02.11.2013. As such, the writ petition being devoid of merit is dismissed.

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

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.06.27
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