

**HIGH COURT OF TRIPURA
AGARTALA**

WA 44 of 2023

Shri Krishna Bhatta
S/o Lt. Chittaranjan Bhatta,
Residence of Rajdharmagar,
PO: Khayerpur, PS: East Agartala,
District: West State of Tripura

..... Appellant(s)
Petitioner in WP(C)

V E R S U S

1. State of Tripura
Represented by Secretary to the Government of Tripura,
Law and Parliamentary Affairs Department,
Having its office at Capital Complex,
PO: Kunjaban, Agartala, West Tripura.
2. L.R and Secretary
Law and Parliamentary Affairs Department,
Having its office at Capital Complex,
PO: Kunjaban, Agartala, West Tripura.
3. DLC and Deputy Secretary,
Law and Parliamentary Affairs Department,
Having its office at Capital Complex,
PO: Kunjaban, Agartala, West Tripura.

..... Respondent(s)
Respondents in WP(C)

For Appellant(s)	:	Mr. T. D. Majumder, Sr. Advocate. Mr. Tapash Halam, Advocate.
For Respondent(s)	:	Mr. D. Bhattacharjee, GA.
Date of Hearing & date of delivery of judgment and order	:	28.08.2023
Whether fit for reporting	:	Yes

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE T. AMARNATH GOUD**

Judgment & Order (Oral)

(Aparesh Kumar Singh),CJ

Heard Mr. T. D. Majumder, learned senior counsel assisted by Mr.
Tapash Halam, learned counsel appearing for the appellant. Also heard Mr. D.
Bhattacharjee, learned GA appearing for the respondents.

[2] The appellant is fighting against the order of his transfer and posting at office of GP & PP, District Court, Gomati, Udaipur as per the order dated 19.09.2020 bearing Memo no. F/1(8)Law/95/7037/40 issued by DLC & Deputy Secretary, Government of Tripura. The petitioner's challenge to the order dated 19.09.2020 in WP(C) 624 of 2020 is dismissed by judgment dated 25.09.2020, the operation portion whereof is extracted herein under:

[6] Reference to the internal notes of the Government by the counsel of the petitioner, would not persuade me to change this impression. In the note dated 28.02.2009 while recommending absorption of the petitioner in the Government service looking to his satisfactory past service, it was suggested that the petitioner is dealing with the matters relating to the Court cases since six years in the office of the Public Prosecutor and therefore is entitled for being granted regular pay scale. It is equivalent to the scale as defined to the Law Clerk under Health and Family Welfare Department. In a further note dated 05.03.2009 the Law Secretary noted that the request of the Law Department was to create a post of Law Clerk along the same line as in the case of Health and Family Welfare Department. However, his suggestion was turned down by the Finance Department. It was opined that the said decision was unreasonable. Neither of these two notes would show that any said post exclusively attached to the Public Prosecutor, High Court of Tripura was created. All that it shows is that the Law Department was of the opinion that the petitioner should be placed in a pay scale which is attached to the Law Clerk of the Family Welfare Department, Government of Tripura and that the decision of the Finance Department to refuse the request is unfortunate. Even otherwise these notes are in the nature of internal deliberations and do not form the final decision of the Government what culminate into the final decision was an offer of appointment to the petitioner as a Law Clerk under Legal Remembrance establishment of the Law Department of Government of Tripura. His offer of appointment besides clarifying that the appointee shall have thus all Tripura transfer liability, did not anywhere specify that his post is that of Law Clerk to the Public Prosecutor, High Court of Tripura. The contention of the counsel of the petitioner that this is an isolated post which no transfer liability cannot be accepted. Even the reference to the decision of the cabinet to approve Note No.5 in its meeting dated 5.9.2007 would change this position. Note in question which the cabinet approved was as under:

“Creation of 1(one) post of Law Clerk in the Legal Remembrancer's Establishment for the Office of the Public Prosecutor, Gauhati High Court, Agartala Bench to regularize the service of Shri Krishna Bhatta under Law Department. (Law Deptt. File No.F.1((6)-LAW/ESTT – 3/02/46 dated 30.08.07).

Going by this decision also, we gather that the cabinet approved the creation of 1(one) post of Law Clerk in the Legal Remembrance Establishment in the Office of Public Prosecutor to regularize the petitioner. This does not indicate that the petitioner cannot be posted anywhere or assigned work on equivalent post.

[7] In that view of the matter this petition is dismissed. Pending application(s), if any, also stands disposed of.

[3] The petitioner went in appeal in WA No.241 of 2021 before the Gauhati High Court. The learned Division Bench of the Gauhati High Court by the judgment dated 26.07.2022 disposed of the appeal without expressing any opinion on the merits of the case of the petitioner but with an observation that in peculiar facts and circumstances, if the appellant files a representation for reconsidering the order dated 19.09.2020, i.e. the transfer order, the respondent authorities shall consider the same sympathetically.

[4] Meanwhile, the appellant obtained information under RTI dated 23.08.2022 from the Law Department, Government of Tripura (Annexure-7 to the writ petition) on two questions which have been extracted herein under:

Query No.1. Whether the post of Law Clerk under L.R's Establishment is single or multiple.

Answer: The post of Law Clerk under L.R's Establishment is a single post.

Query No.2: If the post is multiple, they are which office in available.

Answer. Question does not arise.

[5] The petitioner's representation was refused by order dated 18.10.2022 (Annexure-6 to the writ petition) issued by D.L.R & Deputy Secretary, Government of Tripura. The order dated 18.10.2022 rejecting the application of the appellant has not been challenged in a fresh writ petition i.e. WP(C) 979 of 2022 from which the present appeal has arisen.

[6] The petitioner has infact questioned the transfer order dated 19.09.2020 again in the fresh writ petition in WP(C) 979 of 2022. Learned Writ Court after referring to the findings rendered in the order passed in WP(C)624 of 2020 in the case of the same petitioner where the order dated 25.09.2020 was under challenge refused to grant any relief by holding as under:

6. Having gone through the judgment of the learned Single Judge in WP(C) No.624 of 2020, which was reproduced here-in above, I cannot agree with this submission of the learned senior counsel. The

petitioner was basically appointed under the Establishment of Legal Remembrancer and he was only posted to the Office of Public Prosecutor where one post was created for Law Clerk.

7. In my opinion, this creation of one post attached to the Public Prosecutor of the then Gauhati High Court does not mean that he cannot be posted anywhere in the State of Tripura, when in his appointment letter itself it is written that he can be transferred in any part of the State and needless to say, that the office of the Public Prosecutor/ Government Pleader at Gomati District, Udaipur is also under the direct control of Legal Remembrancer, Govt. of Tripura.

8. Mr. Majumder, learned senior counsel has submitted that learned Single Judge while disposing of the WP(C) No.624 of 2020 could not have an opportunity to deal with the established fact that the post of Law Clerk is a single post as surfaced under RTI reply, and for that reason, Ld. Judge did not accept the submission of the Ld. Counsel in the earlier litigation that it was single post. I have given due consideration to the submission of Mr. Datta Majumder, Ld. Senior counsel. In view of the discussion made in the preceding paragraphs, I do not find any merit in the aforesaid submission.

9. In the above conspectus, the instant writ petition is dismissed. However, there shall be no order as to costs.

[7] Before us, Mr. T. D. Majumder, learned senior counsel assisted by Mr. Tapash Kalam, learned counsel for the appellant has wholly submitted that in the absence of a post in the office of GP & PP, Gomati District, Udaipur the petitioner would not have been transferred from the office of the Public Prosecutor, High Court of Tripura by the order dated 19.09.2020. Reliance is also placed on Rule 15 of the Fundamental Rules and the information obtained under RTI dated 23.08.2022.

[8] The appointment letter of the petitioner has been referred to by the learned Writ Court. The relevant part of the appointment order is extracted hereunder:

Government of Tripura

Law Department

No.F.3(10)-LAW/E-3/09 Dated Agartala the 31st October, 2011.

MEMORANDUM

Sri Krishna Bhatta, S/o. Sri Chitta Ranjan Bhatta is hereby offered a temporary post of Law Clerk (Group-C) in the L.R's Establishment under Law Department, Government of Tripura in the scale of pay of Rs.4200-8650/- (pre-revised) (Revised Pay Band-2 R.5310-24000/- and Grade Pay Rs.2100/- plus other admissible allowances w.e.f. 27.04.2007.

2. The terms of appointment are as follows:

- (i) The appointment may be terminated at any time by a month's notice given by either side, namely, the appointee or the appointing*

authority, without assigning any reason. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the stipulated period of notice by making payment of a sum equivalent to the pay and allowances for the period of notices on the expired portion thereon.

- (ii) *The appointment carries the liability with the appointee to serve in any part of the State of Tripura.*
- (iii) *Other conditions of services will be governed by the relevant rules and orders in force from time to time.*
- (iv) *The appointee shall have to undergo training, if required by this Department. The services of the appointee failing to successfully complete the training in three chances shall be liable for termination.*

[9] Learned Writ Court took note of this fact that the appointment letter itself indicates that the appointees shall have to serve in any part of the state of Tripura. On being asked, learned senior counsel for the appellant submits that the appellant is getting same scale of pay and salary while working in the office of GP & PP, Gomati District, Udaipur from the Law Department. Perusal of his appointment letter dated 31.10.2011 itself indicates that he was appointed in the temporary post of Law Clerk (Group-C) in the L.R's Establishment under Law Department, Government of Tripura and not in the office of the PP, High Court of Tripura.

[10] His initial assignment in the office of Public Prosecutor, High Court of Tripura could also said to be suffering from same defects as that of the office where he is presently assigned i.e. in the office of GP & PP, Gomati District, Udaipur. If the argument of the appellant is accepted, it becomes all the more clear that pay and salary of the appellant is being borne by the L .R Establishment under the Law Department of Government of Tripura. His terms of appointment indicates that he can be posted anywhere in the state of Tripura. The information obtained under RTI does not improve the case of the appellant. The employer i.e. L.R Establishment under Law Department, Government of Tripura has the authority and discretion to post him at any place within the

territory of Tripura though he continues to function under L.R establishment under Law Department.

[11] The learned Writ Court at the first instance had refused to entertain the plea made by the appellant on the ground taking into note that there is nothing on record as regards the Government of Tripura creating a special post for Law Clerk to the office of the Public Prosecutor and the petitioner was appointed on a single cadre post without any liability to work anywhere else. The learned Appellate Court only gave liberty to the petitioner to file a representation but expressing any opinion on the merits of the case of the appellant or interfering in the judgment dated 25.09.2020 of the Learned Writ Court. The entire basis of the challenge in a fresh writ petition to the same order of transfer dated 19.09.2020 is not only misconceived but also has no leg to stand. The learned Writ Court on this occasion also dealt with the issue in details taking into account the order passed in the earlier writ petition but rightly came to the conclusion that the petitioner under the terms of his appointment could be posted in anywhere in the state of Tripura. Since the question of a post, either in the office of the Public Prosecutor, High Court of Tripura or in the office of GP & PP, Gomati District, Udaipur, is not a relevant question bearing the outcome of this case.

[12] In view of the fact that the appointment of the appellant is under L.R establishment of Law Department, Government of Tripura and he has only been assigned work either at the office of the Public Prosecutor, High Court of Tripura till 25.09.2020 or thereafter in the office of GP & PP, Gomati District, Udaipur, the petitioner's contention that in view of a single post on which he was appointed and in the absence of any such sanctioned post in Gomati District, Udaipur, he could not have been transferred has no leg to stand.

[13] This court, taking into consideration of the facts and circumstances of the case, does not find any merit in the case. Hence, the appeal stands dismissed.

(T. Amarnath Goud), J

(Aparesh Kumar Singh), CJ



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