

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.330/2023

Ranjit Kumar Das, Son of Sri Krishnadhan Das, resident of village-Baidyermura, P.O.-Kemtali, P.S.-Melaghar, District-Sepahijala Tripura, Pin-799115.

.....Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner and Secretary to the Department of Law and Parliamentary Affairs, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartlala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura.

2. The Commissioner and Secretary, Social Welfare and Social Education Department, Government of Tripura, New Secretariat Complex Gurkhabasti, Agartala, P.O.-Kunjaban. P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura.

3. The High Court of Tripura, represented by the Registrar General, High Court of Tripura, New Secretariat Complex, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura.

4. The District & Sessions Judge, North Tripura Judicial District, Dharmanagar, P.O. & P.S.-Dharmanagar, District-North Tripura.

5. Sri Satyajit Deb, Son of Narayan Deb, resident of village-West Chebri, P.O.-Chebri, P.S.-Khowai, District-Khowai Tripura, Pin-799207.

6. Sri Sougat Malakar, Son of Dilu Malakar, resident of village-Border Para, P.O. & P.S.-Belonia, District-West Tripura, Pin-799155.

7. Sri Koushal Chakma, son of Tarun Chakma, resident of village & P.O.-Mainama, P.S.-Chailengta, District-Dhalai Tripura, Pin-799275.

.....Respondent(s).

For Petitioner(s) : Mr. Koomar Chakraborty, Advocate.

For Respondent(s) : Mr. B.N. Majumder, Sr. Advocate,
Mr. Rajib Saha, Advocate,
Mr. Soumyadeep Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **01st September, 2023.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Koomar Chakraborty, learned counsel appearing for the petitioner, Mr. Soumyadeep Saha, learned counsel appearing for the State respondents and Mr. B.N. Majumder, learned senior counsel assisted by Mr. Rajib Saha, learned counsel appearing for the respondent No.3-High Court of Tripura.

2. The writ petitioner came before this Court with the plea that he being a Scheduled Caste candidate in the Physically Handicapped (PH) category has not been included in the list of successful candidates of Group-D employees under the District and Sub-ordinate Judiciary of Tripura vide advertisement dated 05.04.2021 (Annexure-3 to the writ petition). According to his calculation, only 4(four) seats have been reserved for PH category against 4% quota though the total posts are 125 and 5(five) posts in PH category ought to have been earmarked to be filled up out of the 125 selected candidates. The name of other PH candidates are at Sl. Nos.78, 93, 134 and 182 of the common merit list of candidates published by the respondent-employer whereas the petitioner's name occurs at Sl.No.222. The select list dated 17.01.2023 is at Annexure-6 to the writ petition.

3. The respondent No.3 has filed a counter affidavit. While denying the averments made by the writ petitioner that only 4(four) posts for PH category have been reserved, it is stated that due to increase in vacancies to 125 posts, the required 4% of PH candidates, i.e. 5(five) physically handicapped candidates were to be filled up with the breakup [UR(PH)=3, ST(PH)=01,

SC(PH)=01]. It is further stated that 3 posts of UR(PH) category were offered to the candidates at Sl. Nos.78, 93 and 134 whereas one post allocated to SC(PH) category was allotted to the candidate from SC(PH) category having Sl. No.182 in the merit list. The petitioner's position stands at Sl. No.222 in the final merit list and he is a SC(PH) category candidate. However, since no ST(PH) category candidate was found eligible, that sole post has remained vacant. The respondents have enclosed the letter No.F.2(17)(b)-DJ/N/DMN/2021-23/4267 dated 08.06.2023 addressed to the Deputy Registrar (Judicial), Hon'ble High Court of Tripura, Agartala from the District & Sessions Judge, North Tripura, Dharmanagar.

4. Mr. B.N. Majumder, learned senior counsel for the respondents, submits that since the only vacant post in SC(PH) category has been filled up by the candidate at Sl. No.134 who is higher in the merit list than the petitioner, the other post of ST(PH) category cannot be allocated to the petitioner who is a SC(PH) category candidate. As such, petitioner is not entitled to any relief.

5. Mr. Koomar Chakraborty, learned counsel for the petitioner, has drawn the attention of this Court to the last paragraph of the communication dated 08.06.2023 (Annexure-R/1) which indicates that out of the 03(three) UR(PH) posts, two posts allotted to the candidates at Sl. Nos.78 and 93, Sri Dipankar Kar (Roll No.2681) and Sri Bishal Nath (Roll No.1822) respectively, are still lying vacant due to their non-joining. Appropriate direction as regards filling up of 2(two) UR(PH) posts is awaited from the High Court. After referring to the communication as above, learned counsel for the petitioner has drawn the attention of this Court to sub-rule 8(a) of Rule 8 of the Tripura

Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 (As amended up to May, 2007) [Annexure-B]. It is submitted that sub-rule 8(a) of Rule 8 provides that if it is found that the required number of Scheduled Caste candidates or Scheduled Tribe candidates for filling up reserved (vacant posts) are not available, the appointing authority may initiate a proposal for filling up the reserved vacant posts by exchange method, i.e. for filling up the vacant posts reserved for Scheduled Tribe candidates, by available Scheduled Caste candidates or for filling up the vacant posts reserved for Scheduled Caste candidates, by available Scheduled Tribe candidates. However, Rule 8(8)(a) further provides that in that event the appointing authority shall send the proposal to the Department for Welfare of Scheduled Castes, Other Backward Classes and Minorities and to Tribal Welfare Department for their concurrence. When concurrence is received, the appointing authority will make appointment subject to the condition that the vacant posts will be carried forward.

6. Learned counsel for the petitioner submits that since the post of ST(PH) category has remained vacant in the absence of an eligible candidate, the petitioner who is next in the order of merit in the SC(PH) category can be accommodated against the reserved ST(PH) vacant post. As such, the respondents may be directed to consider the case of the petitioner in accordance with the extant rules.

7. Learned senior counsel for the respondent-High Court of Tripura, submits that the appointing authority has requested the Hon'ble High Court of Tripura for appropriate directions as regards the two UR(PH) posts which have

been remained vacant due to non-joining of the two candidates of that category at Sl. Nos.78 and 93.

8. I have considered the submissions of learned counsel for the parties. I have also taken note of the pleadings originally made by the writ petitioner, the response of respondent No.3 thereto and also the new plea now being raised by the petitioner on the basis of the letter dated 08.06.2023 (Annexure-R/1 to the counter affidavit) relying upon Rule 8(8)(a) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 (As amended up to May, 2007).

9. Rule 8 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 is quoted *in extenso*:

"8. Direct Recruitment through the Commission/Selection Committee/ Selection Board/Departmental Promotion Committee etc.

(1) While making a request to the Commission or to the Selection Committee/Selection Board for recommending candidates for direct recruitment the appointing authority shall also furnish information about the reservation in favour of candidates belonging to the Scheduled Castes and the Scheduled Tribes. The information should be based on the inspection report of 100 point Roster showing position up to the year in which recruitment is proposed in respect of the concerned post or service as may be furnished jointly by the Director for Welfare of Scheduled Castes and Other Backward Classes and the Director for Welfare of Scheduled Tribes or their representatives. The inspection report is to be furnished in Form - 2.

(2) The inspection report shall form a part of the records of minutes/proceedings of Commission/Selection Committee /Selection Board /Departmental Promotion Committee.

(3) [deleted]

(4) The Commission or the Selection Committee/Selection Board etc. as the case may be, shall furnish its recommendations about such number of candidates as provided in the respective service rules [.....]

(5) The Commission or the Selection Committee/Selection Board etc. shall also furnish to the appointing authority separate lists of candidates recommended by it, namely one in respect of Scheduled Castes, one in respect of Scheduled Tribes and the other in respect of general candidates. A

separate combined list of all categories of candidates in order of their merit/preference shall also be furnished by the Commission or the Selection Committee/Selection Board etc. as the case may be.

Provided that a Scheduled Caste or Scheduled Tribe candidate who occupies on merit **or seniority or seniority-cum-fitness etc.** an unreserved point of the 100-Point Roster in the combined list shall not be shown against any reserved point.

Provided further that at the time of recommending candidates for appointment to any post, the names against unreserved (vacant posts)² shall first be recommended in order of their merit or seniority or seniority-cum-fitness etc., as the case may be, and then the names against reserved vacant posts shall be recommended.

(6) The appointing authority shall then proceed to make appointment in accordance with the roster shown in the Schedule to the Act.

(7) The seniority list of the candidates so appointed shall be determined in order of their merit/preference as shown in the combined list furnished by the Commission or by the Selection Committee/Selection Board etc.

(8) (a) If it is found that the required number of Scheduled Castes candidates or Scheduled Tribe candidates for filling up reserved vacant posts are not available the appointing authority may initiate a proposal for filling up the reserved vacant posts by exchange method, i.e. for filling up the vacant posts reserved for Scheduled Tribe candidates, by available Scheduled Caste candidates or for filling up the vacant posts reserved for Scheduled Caste candidates, by available Scheduled Tribe candidates. He shall send the proposal to the Department for Welfare of Scheduled Castes, Other Backward Classes and Minorities and to Tribal Welfare Department for their concurrence. When concurrence is received the appointing authority will make appointment subject to the condition that the [vacant posts]¹ will be carried forward.

(b) If candidate belonging to Scheduled Castes or Scheduled Tribes is not available by exchange method, then the vacant post may be filled up by deputation /transfer according to concerned Recruitment Rules.

Provided that notwithstanding anything contained in any other rules a reserved vacant post may be filled up by deputation/reserved category of officers/employees holding analogous posts of identical scale of pay and in case of non-availability of officers/employees holding analogous posts, by deputation of reserved category of officers /employees holding lower posts equivalent to the feeder posts.

(c) If the required number of candidates are not available even after further attempt within a recruitment year the reserved vacant posts]shall be carried forward to the next recruitment year.

(9) (a) If the appointing authority after observing the procedures of sub-rule (8), considers it necessary to fill up any reserved vacant post by candidate of unreserved category in the exigencies of public service he may initiate a proposal for de-reservation of the required number of reserved vacant posts. Proposal for de-reservation of vacant posts reserved for Scheduled Caste shall be sent to the Department for Welfare of Scheduled Castes, Other Backward

Classes and Minorities and proposal for de-reservation of vacant posts reserved for Scheduled Tribes to the Tribal Welfare Department for their concurrence. On getting the concurrence of the Tribal Welfare Department or Department for Welfare of Scheduled Castes, Other Backward Classes and Minorities as the case may be, the administrative Department concerned will obtain approval of the Council of Ministers and then issue notification de-reserving vacant posts.

(b) When a vacancy against any post or service is de-reserved it shall be carried forward.

(c) Department for Welfare of Scheduled Castes, Other Backward Classes and Minorities or Tribal Welfare Department may accord concurrence for de-reservation in service or post only when it is satisfied that the Department concerned exhausted all possible efforts including the method of deputation and exchange of vacant posts between Scheduled Castes and Scheduled Tribes candidates, to fill up a reserved vacant post."

10. Learned counsel for the petitioner has tried to make out a new case based upon the document annexed to the counter affidavit that in case the ST(PH) category candidate is not available in the instant recruitment exercise, a proposal can be initiated by the appointing authority for filling up the reserved vacant post by exchange method, i.e. filling up of the vacant post reserved for ST candidate by an available SC candidate like the present petitioner who has got 45 marks and is at Sl. No.222 and is in the SC(PH) category.

11. It appears that the instant plea requires such a proposal to be mooted by the appointing authority before the Department for Welfare of Scheduled Castes, Other Backward Classes and Minorities and the Tribal Welfare Department for their concurrence and only subject to their concurrence the appointing authority would make appointment subject to further condition that the vacant post will be carried forward. Therefore, at this stage, no direction to appoint the petitioner can be issued as the procedure required to be complied is inchoate. The petitioner is, therefore, allowed liberty to make a

representation before the competent authority/appointing authority for consideration of his case for appointment against the vacant ST(PH) category post under the present recruitment exercise in the District and Sub-ordinate Judiciary of Tripura. Needless to say, such representation shall be supported by all necessary facts and documents and the rule position in this regard as referred to hereinabove within a period of 2(two) weeks. On receipt of such representation, the appointing authority would consider the same in accordance with law and if necessary, seek concurrence of the concerned department of the State and also the High Court of Tripura. Let such consideration be made within a reasonable time. Let it be made clear that this Court has not made any comments on the merits of the case of the petitioner and the new plea raised for appointment against the vacant ST(PH) category post.

12. With the aforesaid observations and directions, the writ petition stands disposed of.

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

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.09.06
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