

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.1108/2022

1. Smt. Soma Paul, wife of Sri Subhankar Sen, resident of Bijoy Kumar Chowmuhani, Brajendra Roy Lane, P.O.-Agartala, P.S.-West Agartala, Sub-Division-Sadar, District-West Tripura, PIN-799001, aged about 40 years.

2. Smt. Chandrani Chakraborti, wife of Dr. Angshuman Kamal Bhattacharjee, resident of 16/4, Old Kalibari Lane, near Magnet Club, P.O.-Agartala, P.S.-West Agartala, Sub-Division-Agartala, District-West Tripura, PIN-799001, aged about 44 years.

.....Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary, Education Department, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

2. The Commissioner & Secretary to the Department of Education, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

3. The Commissioner & Secretary to the Finance Department, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

4. The Director, Directorate of Higher Education, Government of Tripura, having his office at Agartala, P.O.-Agartala, P.S.-East Agartala, Sub-Division-Agartala, District-West Tripura.

.....Respondent(s).

Along with

WP(C) No.391/2023

Smt. Sarmistha Majumder, wife of Shri Anup Roy Barman, resident of Village-Pragati Road, Krishnanagar, P.O.-Agartala, P.S.-West Agartala, Sub-Division-Agartala, District-West Tripura, PIN -799001, aged about -52 years.

.....Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary, Education Department, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

2. The Commissioner & Secretary to the Department of Education, Government of Tripura, having his office at New Secretariat Complex,

Gorkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

3. The Commissioner & Secretary to the Finance Department, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura.

4. The Director, Directorate of Higher Education, Government of Tripura, having his office at Agartala, P.O.-Agartala, P.S.-East Agartala, Sub-Division-Agartala, District-West Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mrs. Riya Chakraborty, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharya, G.A.,
Mr. Dipankar Sarma, Addl. G.A.,
Mr. K. De, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **09th August, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Somik Deb, learned senior counsel assisted by Mrs. Riya Chakraborty, learned counsel appearing for the petitioners, and Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the respondents-State.

2. The writ petitioners have approached this Court for issuance of a direction/mandamus to promote them to the post of Senior Instructor (Group-B, Gazetted) with retrospective effect and further create one promotional avenue for the petitioners in terms with the judgment and order dated 31.03.2016.

3. The judgment of the learned Writ Court dated 31.03.2016 was also carried in appeal in Writ Appeal No.114 of 2016 by the State. However, it

was dismissed vide order dated 21.02.2017 (Annexure-2 to the writ petition). The writ petitioners further pursued contempt proceedings being Cont.Cas(C) No.33 of 2017 and other two analogous cases which were also disposed of on 21.09.2017 with the observation that as soon as the restriction imposed by the Apex Court either by way of disposal of the Special Leave Petition or the appeal therefrom is vacated, the case of the petitioners shall be considered within a period of 30 days therefrom.

4. It appears that the respondents have in the meantime first created two posts of Senior Instructor (Group-B, Non-Gazetted), Chemistry, Diploma Level Technical Institution, Tripura vide memo dated 25.07.2017 (Annexure-4 to the writ petition). By another memo dated 04.02.2022 (Annexure-5 to the writ petition), the said post has been made Gazetted. These two writ petitioners namely Smt. Soma Pal and Smt. Chandrani Chakraborty in WP(C) No.1108 of 2022 have been promoted on 19.07.2023 on the same post in Gazetted capacity. The petitioner Smt. Sarmistha Majumder in WP(C) No.391 of 2023 has also been promoted now to the post of Senior Instructor (Group-B, Gazetted), Chemistry, Diploma Level Technical Institute, Tripura.

5. Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the respondents-State, submits that the directions of the Writ Court and the prayer of the writ petitioners have now been redressed. Additionally, it has been averred that these promotions are ad-hoc in nature in view of the interim order passed by the Apex Court dated 09.04.2015 and at this stage, there cannot be any scope for giving retrospective effect to the promotion of the petitioners.

6. Mr. Somik Deb, learned senior counsel assisted by Mrs. Riya Chakraborty, learned counsel appearing for the petitioners, submits that the respondents have delayed the benefit of promotion to the petitioners despite a clear direction by the Writ Court in WP(C) No.488 of 2015 and analogous cases judgment dated 31.03.2016 vide paragraph-13 whereunder they were directed to formulate a scheme for promotion from the post of Senior Instructor, Group-C (Non-Gazetted) for the Science Department or for the post of Instructor, Group-C (Non-Gazetted) for the Science Department within a period of 6 (six) months from the date of the judgment. It was further directed that in terms of the said scheme, the petitioners shall be considered if otherwise eligible. The litigation journey imposed upon the petitioners due to the inaction of the respondents has led to delay in the promotion. Therefore, their promotions should be granted with retrospective effect from the date of expiry of 6(six) months from the judgment dated 31.03.2016.

7. I have considered the submissions of learned counsel for the parties. It appears from the facts and chronology of dates noted above that the respondents have created promotional post of Senior Instructor in Non-Gazetted capacity on 25.07.2017 as per the directions of the learned Writ Court at the first instance. However, on 04.02.2022 the said post has been converted as Gazetted post. Petitioners have been promoted now on a Gazetted post of Senior Instructor (Group-B) in the relevant subject. Respondents have taken a plea that in view of the pendency of the Special Leave Petition before the Apex Court and the interim order passed therein, promotions are being given on ad-hoc basis for the present. Therefore, there is no scope for granting promotion

with retrospective effect. This is being done on the basis of the promotion policy dated 22.06.2021 (Annexure-R/6 to the writ petition).

8. In the background facts noted above, this Court is of the view that though there has been considerable delay in creation of the post first and then conferring it with a Gazetted status as late as 04.02.2022, the respondents have taken further 17 (seventeen) months time to formally issue the notification of their promotion to the post of Senior Instructor (Group-B, Gazetted) in the relevant subject. Respondents have, however, also taken a plea of pendency of the Special Leave Petition relating to the reservation issue. Therefore, at this stage, this Court is of the view that the grievances of the petitioners relating to grant of promotion have been redressed. They are, however, allowed liberty to make representation before the respondent authorities for considering their claim of retrospective promotion from the date on which the posts were made Gazetted, i.e. 04.02.2022, which may be considered in accordance with law.

9. With the above observations and directions, the writ petitions are disposed of.

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

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.08.10
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