

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 449 of 2021

1. **Dr. Ankita Bhattacharjee**, D/o- Sri Jagabandhu Bhattacharjee, R/o- South East Corner of Govt. Press Quarter, Bardowali, Taltala, Agartala, West Tripura, Age- 29.
2. **Dr. Subarna Debnath**, D/o- Sri Rajkumar Debnath, R/o – Ashram Chowmuhani, Dhaleshwar, Agartala, West Tripura, PIN- 799004, Age- 28.

.....Petitioner(s).

VERSUS

1. **The State of Tripura**,
(Represented by the Principal Secretary, Department of Health & Family Welfare, Govt. of Tripura, New Secretariat Complex, P.O – Secretariat Complex, Agartala, West Tripura).
2. **The Secretary, Department of Health, Govt. of Tripura**,
New Secretariat Complex, P.O –Secretariat Complex, Agartala, West Tripura.
3. **The Director, Department of Health, Govt. of Tripura**,
Pandit Neheru Complex, Agartala, West Tripura . PIN - 799006 .
4. **The Medical Superintendent, Agartala Govt. Medical College & GBP Hospital**, P.O- Kunjaban, Agartala, West Tripura, PIN -799006.
5. **Tripura Public Service Commission**, Represented by it's Secretary, Akhaura Road, P.O- Agartala, P.S-West Tripura, Dist:- West Tripura, PIN -799001.
6. **The Secretary, Tripura Public Service Commission**,
Akhaura Road, P.O- Agartala, P.S- West Tripura, Dist :- West Tripura, PIN -799001.
7. **Sanjoy Aine**, S/o- Chandan Aine.
8. **Akash Bhowmik**, S/o- Tapas Bhowmik.
9. **Debaleena Dasgupta**, D/o- Debabratra Dasgupta.
10. **Kakali Roy**, D/o- Hirendra Lal Roy.
11. **Sougata Saha**, S/o- Goutam Kumar Saha.
12. **Debalin Paul**, S/o-Late Dhirendra Paul.

13. Sanghamitra Dhar, D/o- Dipal Dhar.

14. Ronit Das, S/o- Ranjit Kumar Das.

15. Prasenjit Shil, S/o- Ranjit Kumar Shil.

16. Debarun Roy, S/o- Bijoy Krishna Roy.

17. Diptanu Chakraborty, S/o Tapan Chakraborty.

18. Subhrangshu Biswas, S/o- Sudip Biswas.

19. Babita Debnath, D/o- Ranjit Debnath.

20. Subranil Ghosh, S/o- Subhasish Ghosh.

21. Saurav Lodh, S/o- Tapan Kumar Lodh.

22. Shaolima Ghosh, D/o- Tapan Ghosh.

23. Anindita Shil, D/o- Subhash Chandra Shil.

24. Baishali Saha, D/o- Arjun Saha.

25. Paramita Debnath, D/o- Narayan Chandra Debnath.

..... Respondent(s).

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. Samarjit Bhattacharjee, Advocate Mr. Kawsik Nath, Advocate
For Respondent(s)	:	Mr. SM Chakraborty, Sr. Advocate Mr. S. Lodh, Advocate Mr. Raju Datta, Advocate Ms. Ankita Pal, Advocate
Date of hearing and delivery of judgment and order	:	18.10.2023.
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order (Oral)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel and Mr. Kawsik Nath, learned counsel appearing for the petitioners. Also heard Mr. D. Bhattacharya, learned GA representing the State-respondents as well as Mr. Raju Datta, learned counsel representing respondents No.5 &

6 [Tripura Public Service Commission (TPSC)]. Mr. S.M. Chakraborty, learned senior counsel assisted by Ms. Ankita Pal, learned counsel is present on behalf of respondents No. 7, 8, 10, 12, 15, 16, 17, 18, 20 & 21 and Mr. S. Lodh, learned Legal Aid counsel is present on behalf of respondents No. 9, 13, 14, 19, 23 & 24.

[2] The instant writ petition has been preferred under Article 226 of the Constitution of India for direction to the respondents No.5 & 6 to modify the select list published vide notification, dated, 15.06.2021 for the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS, for incorporating the names of the petitioners in the select list, above the respondents Nos.7 to 25, after adding 10 marks to the petitioners for performing duty of COVID patients at Obstetrics & Gynecology Ward, AGMC & GBP Hospital. And further, to pass an interim order, restraining the respondents No.1 to 4 from giving appointment to the respondents No.7 to 25 in the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS, till the disposal of the writ petition.

[3] The case of the petitioners in brief is that vide Notification dated, 15.06.2021, the Secretary, Tripura Public Service Commission (TPSC for short) have published the list of recommended candidates for the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS. In the said list of recommended candidates, the names of the petitioners did not appear. According to the petitioners, they were illegally deprived of awarding of 10 marks, earmarked for candidates who have performed duty of COVID 19 patients at health institutions under the Government of Tripura. The petitioners performed duty of COVID 19 patients at Obstetrics & Gynecology Ward, AGMC & GBP Hospital. It is opined that the petitioners are entitled to 10 marks and in that event, the names of the petitioners would have been in the select list, above the private respondents No.7 to 25 whose names appear at the serial nos.17 to 35 of the select list, notified on 15.06.2021.

[4] The Secretary, Tripura Public Service Commission, vide Advertisement No.03/2021, dated, 08.05.2021, invited online applications in prescribed format from the citizens of India for selection of candidates for recruitment to the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS, Group-A, Gazetted under the Health & Family Welfare Department, Government of Tripura. The advertisement contained the prescribed requisite qualification regarding eligibility. As per the said advertisement, total number of vacancies in the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS, was shown as 164 including reserved and unreserved categories of candidates. As per the advertisement dated 08.05.2021, the following conditions were to be fulfilled by a candidate for getting appointment through the selection process:

“Selection Process:

(a) As per service rule the Recruitment process will comprise of 02 (two) steps viz.- i) Short listing of candidates on the basis of API calculation (Academic Performance Index) (100 marks) & 10 marks for the candidates who have performed duty of Covid-19 positive patients in the different health institutions of the Govt. of Tripura, ii) Interview process (05 marks).

(b) On the basis of total API scoring, including 10 marks for duty of Covid-19 positive patient, a limited no. of candidates, maximum 3(three) times of total vacant posts (in category wise), will be selected merit wise for interview.

(c) It is also mentioned here that candidate(s) scoring marks equal to that of the last qualified candidate in the API scoring shall also be called for interview.

(d) The final selection will be made in order of merit on the basis of the marks obtained by a candidate in the API calculation (out of 110) and by adding the marks obtained in the Interview/Personality Test. (Out of 05).

(e) In the list of recommendation, merit position of candidates securing equal marks will be finalized as per their seniority of age. The same procedure is to be followed for preparing waiting list, if there be any.

Further provided that, in the list of recommendation, merit position of candidates securing equal marks in aggregate and also of the same age will be decided on the basis of percentage of marks obtained in the minimum educational qualification prescribed in Recruitment Rules/ Service Rules.”

[5] Thereafter, another Notification was issued by the TPSC on 20.05.2021 notifying that “10 marks for the candidates who have performed duty of Covid-19 positive patients in the different health institutions of the Govt. of Tripura” as mentioned

in Para-(a) of selection process of the aforesaid advertisement, will be provided as a one time measure.

[6] The petitioners have requisite qualification for the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS, in terms of the Advertisement, dated, 08.05.2021, issued by the TPSC. The petitioners obtained MBBS Degree and thereafter got admission to the Post Graduate Course in Obstetrics & Gynecology at Agartala Government Medical College. Both the petitioners applied for the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS. The petitioners along with the applications, enclosed all necessary documents, including certificates, dated 12.05.2021, issued by Professor & Head, Department of Obstetrics & Gynecology, Agartala Government Medical College. It is submitted on behalf of the petitioners that during the Corona period, expected mothers and other patients with Gynecological problems, who were COVID positive were admitted and treated at the Obstetrics & Gynecology Ward of the AGMC & GBP Hospital, where the petitioners are serving as Post Graduate Junior Resident (Academic). It is also submitted on behalf of the petitioners that as per the Register, maintained in the Obstetrics & Gynecology Ward of AGMC & GBP Hospital, 141 cases of Vaginal Deliveries of COVID positive expected mothers were handled at the Obstetrics & Gynecology Ward, AGMC & GBP Hospital and 53 cases of Cesarean Section of COVID positive patients were similarly handled at Obstetrics & Gynecology Ward. Further, 12 Minor Operations & 7 Major Operations of COVID infected patients were also handled during COVID period at the Obstetrics & Gynecology Ward, AGMC & GBP Hospital.

[7] The petitioners submitted duly filled up API calculation sheet for recruitment to the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS. They mentioned total API score out of 100 and also stated “YES” in respect to Column “Whether performed duty of Covid-19 positive patients in different health

institutions of the Govt. of Tripura (Yes or No)". But, while appearing in the interview, they were compelled to write "NO" against the said column in premeditated format.

[8] On 15.06.2021, the Secretary, Tripura Public Service Commission (TPSC for short) have published a Notification with the list of recommended candidates for the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS. In the said list of recommended candidates, the names of the petitioners did not appear as they had not been awarded with 10 marks earmarked for candidates who have performed duty of COVID 19 patients at health institutions under the Government of Tripura. Aggrieved thereby, the petitioners have preferred the instant writ petition.

[9] Mr. P. Roy Barman, learned senior counsel appearing for the petitioners submits that, the petitioners are illegally deprived of awarding of 10 marks, earmarked for the candidates who have performed duty of COVID 19 patients at health institutions under the Government of Tripura. The petitioners performed duty of COVID 19 patients at Obstetrics & Gynecology Ward, AGMC & GBP Hospital. Learned senior counsel submits that petitioners are entitled to 10 marks and in that event, the names of the petitioners would have been in the select list, above the private respondents No.7 to 25 whose names appear at the serial nos.17 to 35 of the select list, notified on 15.06.2021. Both the petitioners have not been given 10 additional marks for performing duty of COVID 19 positive patients and if they were allowed 10 marks then total score of the Petitioner No.1 would be 76.65 (API 66.65 + 10 for COVID duty) & the Petitioner No.2 would be 78.53 (API 68.53 + 10 for COVID duty). Hence, learned senior counsel for the petitioners prays that the instant writ petition be allowed by this Court considering the fact that the petitioners are illegally deprived of by the official respondents.

[10] On the contrary, Mr. D. Bhattacharya, learned Government Advocate representing the State submits that offer of appointment was issued to the 156 selected candidates on the basis of recommendation of TPSC. Out of the total vacancies of 164 nos. of posts, the said 156 nos. of candidates were selected for the post of Junior Medical

Officer/General Duty Medical Officer, Grade-IV of THS maintaining all formalities. He contended that since the petitioners have not complied with the procedure contemplated in the selection process though they have submitted certificates issued by Professor & Head, Department of Obstetrics & Gynecology, Agartala Government Medical College, their case was not considered for awarding with the additional marks and their selection was rejected.

[11] Mr. Raju Datta, learned counsel appearing for the respondents No.5 & 6 (Tripura Public Service Commission) submits that the TPSC has only processed the list with the information which has been supplied by the Directorate of Health Service, Government of Tripura and the selection list has been prepared as per the Notification dated 08.05.2021 and the memorandum dated 07.05.2021.

[12] Mr. S.M. Chakraborty, learned senior counsel appearing for respondents No. 7, 8, 10, 12, 15, 16, 17, 18, 20 & 21 submits that the respondents who have got 10 marks for duty in COVID period and selected for the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS are Respondents No.7, 8, 10, 15, 17, 18 & 21. He has also informed that the respondents who have been selected for the said post but have not been awarded with 10 marks for duty in COVID period, are Respondents No.12, 16 & 20.

[13] Mr. S. Lodh, learned counsel appearing for respondents No. 9, 13, 14, 19, 23 & 24 contends that the respondents who have got 10 marks for duty in COVID period and selected for the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS are Respondents No.13 & 14. He has also informed that the respondents who have been selected for the said post but have not been awarded with 10 marks for duty in COVID period, are Respondents No.9, 19, 23 & 24. He submits that it is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The respondents (selected candidates) herein, have been appointed following all formalities in the selection process.

He has further placed reliance on the judgment of the Apex Court in *Maharashtra Public Service Commission Versus Sandeep Shriram Warade and others* reported in (2019) 6 SCC 362, the relevant portion of the same is quoted hereunder:

“9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

[14] Admittedly, the entire process of selection in the notification issued by the Tripura Public Service Commission (TPSC) on 08.05.2021 which has already been quoted earlier, does not indicate that the certificate of Director, Medical and Health Services needs to be enclosed. The petitioners complied with the all conditions and insofar as duty of COVID 19 positive patients certificate is also concerned, they have submitted certificates issued by their concerned Head of the Department indicating that during the COVID 19 pandemic situation, they rendered medical services to the patients in the Department of Obstetrics & Gynaecology and performed deliveries to the pregnant women. Accordingly, they are entitled for 10 marks as per the Memorandum dated 07.05.2021 of the Government issued in this regard. There is a lot of correspondence made between the Government and the Tripura Public Service Commission but, in a bare reading of the memorandums issued by the Government do not indicate that they are made available in the public domain through their website.

[15] It is also not expected by the Government that once a notification by all means, is issued time to time, they need to supplement their original selection conditions

making it tailor made for the reasons best known to them and they deprived the genuine candidates who performed their duties risking their lives during the COVID period.

[16] It appears that the official respondents could have performed their duties with more care but, in the present case, it appears that in a casual manner, the respondent- Tripura Public Service Commission has acted with premeditated mind. The format which has already been prepared and signatures have been obtained during the course of interview which categorically indicates in the column “*Whether performed duty of COVID-19 positive patients in different health institutions of the Govt. of Tripura after completion of Internship (Yes or No)*”. The said format is as follows:

“TRIPURA PUBLIC SERVICE COMMISSION
AGARTALA

Particulars of relevant academic records, declaration regarding duty of COVID-19 positive patient’s in different health institutions of the Govt. of Tripura & details of Permanent Registration Certificate

Advt No. 03/2021 dated 08.05.2021 and subsequent Addendum dated 17.05.2021 & Notification dated 12.05.2021 & 20.05.2021 No. of Post:- 64 Nos. (UR-35, SC 28 & ST-101)

Name of the post :- Junior Medical Officer/ General Duty Medical Officer **Date of interview :** 09.06.2021.

Name of the Department :- Health & Family Welfare Department.

Name of the candidate :-

Father’s Name :

Roll No. :-

TABLE –A

Aggregate of MBBS Examination marks obtained in all MBBS Examinations	Total marks allotted in all MBBS Examinations	% of marks [(Aggregate of MBBS Examination marks obtained in all MBBS Examinations ÷ Total marks allotted in all MBBS Examinations) x 100]	Number of additional attempt in MBBS Course	Marks deducted for each additional attempt in the MBBS Course [Number of additional attempt x2] marks	Total API score (out of 100)[c-e]
a	b	c	d	e	f
Whether performed duty of COVID-19 positive patient’s in different health institutions of the Govt. of Tripura after completion of Internship (Yes or No)			Whether certificate issued by the Director, Health Service, Govt. of Tripura		Allotted marks (10 marks)
No			No		0

TABLE –B
Permanent Registration Certificate

Name of Issuing Authority	Date of Issue	Registration Number

I do hereby declare that the above statement made by me is true & correct to the best of my knowledge. Any kind of false declaration will be liable for rejection of my candidate at any stage.

Full Signature of the Applicant”

[17] This format was not required as the petitioners themselves in their own hand-writing submitted duly filled up API calculation sheet for recruitment to the post of Junior Medical Officer/General Duty Medical Officer, Grade-IV of THS along with the application. They mentioned total API score out of 100 and also stated “YES” in respect to Column “Whether performed duty of Covid-19 positive patients in different health institutions of the Govt. of Tripura (Yes or No)”. To put it into controversy, the official respondents said that the case of the petitioners could not be considered since they have not forwarded the applications through the Director, Department of Health, Government of Tripura and the certificate issued by the Head of the Department cannot be accepted. In this regard, this Court has ordered an inquiry on 24.08.2023, to be conducted by the Principal Secretary, Department of Health & Family Welfare, Govt. of Tripura and to obtain a report to ascertain whether the content which is issued by the HOD to say that the petitioners rendered their services to the COVID-19 patients during the pandemic were correct or not. Accordingly, the inquiry was conducted and report has been submitted by the official respondents along with the additional counter affidavit dated 17.10.2023 and as per report, the contents of the certificates issued by the Head of the Department in favour of the petitioners are correct. The internal correspondence and issuance of supplementary instructions to the main notice dated 08.05.2021 of Tripura Public Service Commission either through itself or through the respondents No.1 to 4 cannot be appreciated. Once a Notification and selection process is on, it should be reasonably presumed that with all cautious, the selection authorities and the Government in its selection agency have acted with a due diligence but, in this case the official respondents acted in a unfair manner. This Court has no hesitation to say the action of the official respondents is totally highhanded, arbitrary putting the petitioners to suffer and deprived the society of eminent doctors who are service oriented and away from their service from 2020-21 onwards.

[18] In the selection list, the names of the petitioners did not appear. As per the selection list, petitioner No.1 got 66.65 marks and the petitioner No.2 got 68.53

marks. But, if they were allowed 10 marks and were not deprived, then total score of the Petitioner No.1 supposed to have been 76.65 (API 66.65 + 10 for COVID duty) & the Petitioner No.2 supposed to have been 78.53 (API 68.53 + 10 for COVID duty).

[19] Hence, this Court feels that the petitioners are entitled for addition of 10 marks and accordingly, Petitioner No.1 will get 76.65 marks (API 66.65 + 10 for COVID duty) & the Petitioner No.2 will get 78.53 marks (API 68.53 + 10 for COVID duty). This Court declares that they are entitled to get their additional marks and thus, their suitable rank should be placed in the selection list. Hence, the writ petition is liable to be allowed by declaring the action of the official respondents as illegal, highhanded and arbitrary and direct the official respondents to place the petitioners in their suitable rank in the selection list and accordingly provide them appointment as per procedure forthwith. Since, it is indicated in the counter affidavit submitted by the State that there are 8 vacancies (out of 164 sanctioned post, 156 were recruited), both the petitioners can be accommodated in the employment.

In view of the above, the appointment already provided to the unofficial respondents will not be disturbed and admittedly, they are not the aggrieved parties. This Court is conscious and it is not sitting over as a selection official nor reviewing the selection norms. But, this Court is finding fault with the manner in which the official respondents have acted in the process of adopting the selection procedure and committed irregularities depriving the legitimate rights of the petitioners. This Court finds that the action of the official respondents in not providing employment to the petitioners as illegal, arbitrary & highhanded and declare that the petitioners are entitled for employment.

In view of the above there shall be a direction to the official respondents to provide employment to the petitioners forthwith. Accordingly, this instant writ petition is allowed.

As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

JUDGE

Sabyasachi G.

**SABYASACHI
GHOSH**

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