

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.474 of 2023

Ganga Jamatia

..... Petitioner(s).

Versus

The State of Tripura and others

..... Respondent(s).

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Koomar Chakraborty, Advocate.

For Respondent(s) : Mr. D. Sarma, Addl. GA,
Mr. Raju Datta, Advocate,
Ms. S. Lodh, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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02/08/2023

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel for the petitioner. Also heard Mr. D. Sarma, learned Additional Government Advocate for the respondent-State and Mr. Raju Datta, learned counsel for the respondent authorities-TPSC.

[2] Writ petitioner has approached with the same cause of action relating to his promotion to the post of Under Secretary under the respondent-Tripura Public Service Commission (TPSC) with retrospective effect from 2010 by seeking a mandamus upon the respondents to conduct a review DPC and reconsider his case for promotion without taking into account the uncommunicated ACR Grading. In the DPC conducted in 2010, petitioner and two others were recommended but the other two employees were promoted as Under Secretary, TPSC while the petitioner was left out. He preferred WP(C) No.393 of 2011, during pendency of which the petitioner was promoted to the post of Under Secretary, TPSC on 6th May, 2013.

Taking note of the instant development brought to the notice of the court by the learned counsel for the State and the acceptance of this statement by the learned counsel appearing for the petitioner, writ petition was disposed of as infructuous vide order dated 3rd June 2015 at Annexure-6. Petitioner has thereafter obtained an information under RTI on 22nd March, 2021 on the query whether his adverse ACRs for the relevant period of 2007-2008 and 2008-2009 were communicated or not. Thereafter, he approached this court in WP(C) No.793 of 2021 which was disposed of by a direction upon the respondents to consider his case in the light of the communications made by the other respondents in favour of the petitioner within a stipulated period. The case of the petitioner was considered but declined by the impugned order dated 21st July 2023 and 27th July, 2023 at Annexure-15 & 16 respectively issued by the Controller of Examination, TPSC on the ground that the petitioner has been granted the benefit of promotion with effect from 6th May, 2013 and as such no further relief is due to him now.

[3] Mr. P. Roy Barman, learned senior counsel for the petitioner has drawn the attention of this Court to the information obtained under RTI being the notings of the file of the DPC at page 40 and also the noting dated 30th December, 2010 where it was proposed to process the matter for review DPC Meeting with ACR for the period from 2010-2011 of the concerned officer. Relying upon these documents obtained under RTI in 2021, petitioner prayed for review DPC for considering his case for promotion to the post of Under Secretary, TPSC with retrospective effect from 2010 ignoring the uncommunicated ACRs.

[4] It is submitted that uncommunicated ACRs were made the basis for exclusion of his name from promotion to the post of Under Secretary, TPSC in 2010. He has been adversely affected since his promotion was delayed by three years till 6th May, 2013 when he was finally promoted but after other two persons. The cause of action which has arisen now on furnishing of documents under RTI requires a revisit to the case of the petitioner by the concerned respondent-TPSC, otherwise, grave injustice would continue to perpetuate.

[5] Mr. Raju Datta, learned counsel for the respondent-TPSC has drawn the attention of this Court to the order dated 21st July, 2023 at Annexure-15 and also the order dated 27th July, 2023 at Annexure-16 which contains extract of the prayer made by the writ petitioner in WP(C) No.393 of 2011. It is submitted that a perusal of the prayer made in the writ petition preferred in 2011 would show that petitioner was conscious of the fact that he was declared unfit and, therefore, had not been promoted with retrospective effect from 10th November, 2010.

[6] After having been conferred promotion with effect from 6th May, 2013, the writ petitioner accepted it and on that basis the WP(C) 393 of 2011 was disposed of vide order dated 3rd June, 2015 at Annexure-6. The matter attained finality. The cause of action, therefore, cannot be re-agitated on these grounds.

[7] I have considered the submissions of the learned counsel for the parties and taken note of the relevant material pleadings and documents relied upon by them from the record. At the first blush itself it appears that the

instant writ petition has sought to agitate a grievance which was raised by the writ petitioner in WP(C) No.393 of 2011 when the petitioner was not promoted on the basis of the recommendation of the DPC held in 2010. The matter attained finality since the petitioner accepted the promotion granted with effect from 6th May, 2013 on the basis of which the said writ petition was disposed of. Petitioner could have agitated his claim for retrospective promotion on the basis of uncommunicated remarks and could have diligently placed before the Court documents which he has now obtained under RTI in 2021. The writ petition of 2011 was agitated with the same prayer. As such, the petitioner cannot be allowed to re-agitate a cause of action which has attained finality by passing of the order dated 03.06.2015 in WP(C) 393 of 2011 without any demur or protest by the petitioner. Even, otherwise the information obtained under RTI in 2021 could not revive a cause of action which had attained finality after grant of promotion to the petitioner with effect from 6th May, 2013. As such this Court does not find any error or illegality in the order dated 27th July, 2023 at Annexure-16 and communication dated 21st July, 2023 at Annexure-15 passed by the respondent authority-TPSC.

[8] As such, the writ petition, being devoid of merit, is dismissed.

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

(APARESH KUMAR SINGH), CJ